



United States Attorney
Western District of Pennsylvania

U.S. Post Office & Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219

412/644-3500

October 26, 2005

Thomas Ceraso, Esquire
2300 Freeport Road
Suite 7
New Kensington, PA 15068

Re: United States of America v.
Douglas Henderson
Criminal No. ~~(b)(1) (b)(7)(C)~~ 06-85

Dear Mr. Ceraso:

This letter sets forth the agreement by which your client, Douglas Henderson, will enter a plea of guilty in the above-captioned case, concerning a scheme to defraud a health care program during the period of approximately 1995 to 2002, conspiracy and income tax evasion. The letter represents the full and complete agreement between Mr. Henderson and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Mr. Henderson will be sentenced under the Sentencing Reform Act, 18 U.S.C. §3551, et seq. and 28 U.S.C. §991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States District Court by a preponderance of the evidence.

A. The defendant, Douglas Henderson, agrees to the following:

1. With respect to all potential federal criminal offenses resulting from the health care fraud, conspiracy and tax fraud scheme for which he is subject to prosecution, Mr. Henderson agrees to toll the statute of limitations, and waive all rights to defenses or objections related to delay

LIMITED OFFICIAL
USE

October 26, 2005
Page 2

in his prosecution, which might otherwise accrue after the date of this letter, such tolling and waiver to continue for an indefinite period beginning the date of this letter and ending one hundred and twenty (120) days after the later of either of the following: (a) the date that the United States Attorney receives notice of the occurrence of any event that the United States Attorney determines constitutes a breach of this agreement by Douglas Henderson; or (b) the date that any judgment of a competent court of the United States becomes final that has the effect of reversing or vacating any conviction and/or sentence entered pursuant to this agreement. Mr. Henderson expressly understands and acknowledges that his signature on the last page of this letter (page nine) accepting this agreement will itself fully and conclusively document and establish the waiver of defenses and objections and tolling of the statute of limitations set forth herein.

2. Mr. Henderson will waive in open Court his constitutional right not to be prosecuted for a felony except by indictment, in accordance with Rule 7(b) of the Federal Rules of Criminal Procedure, and consent that the proceedings may be initiated by the United States Attorney through a three count Information charging him with criminal felonies, specifically health care fraud in violation of 18 U.S.C. §1347, conspiracy in violation of 18 U.S.C. §371, and income tax evasion in violation of 26 U.S.C. §7201 (a draft of the Information is being forwarded for the use of your client with this letter). He will enter a plea of guilty to the Information pursuant to Rule 11 of the Federal Rules of Criminal Procedure.
3. He acknowledges his responsibility for (1) all fraud against health care programs in violation of the laws of the United States related to his participation in the scheme described in the Information, and (2) all tax crimes in violation of the laws of the United States occurring during the period of the foregoing scheme, and stipulates that all such conduct may be considered as relevant conduct pursuant to Guidelines §1B1.3 by the Probation Office and by the District Court in imposing sentence.
4. He will assist law enforcement agencies in investigating all aspects of the scheme to defraud health care programs of which he has knowledge.

October 26, 2005
Page 3

5. He will be fully debriefed regarding the investigation by personnel of the United States Attorney's Office and/or Special Agents of the Federal Bureau of Investigation and Internal Revenue Service, and United States Postal Inspectors and/or representatives of other federal, state or local law enforcement agencies as may be determined by the United States Attorney.
6. He will provide all information and evidence within his knowledge or control concerning the investigation. All such information will be full, complete, accurate, and truthful. The determination of the United States Attorney as to the completeness, accuracy, and truthfulness of the information and evidence provided shall be final and conclusive.
7. He will provide all documents and/or physical evidence within his possession concerning the investigation.
8. He will submit to a polygraph examination administered by an agent of the federal government if requested to do so by the United States Attorney.
9. He will, when requested, testify in grand jury, pretrial, trial, sentencing and post-conviction proceedings in this district and elsewhere.
10. He will pay mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A, and 3664, to the victims and/or other persons or parties authorized by law, in such amounts, at such times, and according to such terms as the court shall direct. The amount of restitution may not necessarily be the same as the amount of loss for the purpose of determining the offense level under the Sentencing Guidelines.
11. Upon request of the United States, he agrees to provide all information regarding his income, assets and financial status. He agrees to complete a financial statement under oath. He will immediately notify the court and the United States Attorney of any improvement in his economic circumstances that might increase his ability to pay restitution and that occurs from the date of this agreement until the completion of his sentence, including any term of supervised release.

October 26, 2005
Page 4

12. If the Court imposes a fine or restitution as part of a sentence of incarceration, he agrees to participate in the United States Bureau of Prisons' Inmate Financial Responsibility Program, through which 50% of his prison salary will be applied to pay the fine or restitution.
13. At the time Mr. Henderson enters his plea of guilty, he will deposit a special assessment of \$300 in the form of cash, or check or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.
14. Mr. Henderson waives the right to take a direct appeal from his convictions or sentence under 28 U.S.C. §1291 or 18 U.S.C. §3742, subject to the following exceptions:
 - (a) If the United States appeals from the sentence, he may take a direct appeal from the sentence.
 - (b) If (1) the sentence exceeds the applicable statutory limits set forth in the United States Code, or (2) the district court erroneously departed upward from the guideline range determined by the court under the Sentencing Guidelines, he may take a direct appeal from the sentence.

Mr. Henderson further waives the right to file a motion to vacate sentence, under 28 U.S.C. §2255, attacking his conviction or sentence and the right to file any other collateral proceeding attacking his conviction or sentence.

- B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:
1. Prosecution of Mr. Henderson for offenses determined by the investigation will be limited to the charges to be specified in the Information described in paragraph A2 of this agreement.
 2. Pursuant to Section 1B1.8 of the Sentencing Guidelines, the United States Attorney will not use against Mr. Henderson any information or evidence provided by him in the course of his assistance in the investigation.

October 26, 2005
Page 5

3. In her discretion, the United States Attorney may apply for a formal grant of immunity under 18 U.S.C. §§6002 and 6003, in connection with Mr. Henderson's testimony before a federal grand jury or in a court proceeding.
4. Prior to sentencing, the United States Attorney will orally or in writing advise the court of her evaluation of the nature, extent, completeness, accuracy, truthfulness and value of the assistance and testimony of Mr. Henderson. This evaluation is committed to the sound discretion of the United States Attorney.
5. The United States Attorney retains the right of allocution at the time of sentencing to advise the sentencing court of the full nature and extent of the involvement of Mr. Henderson in the offense charged in the Information and of any other matters relevant to the imposition of a fair and just sentence.
6. Prior to sentencing, the United States Attorney will, orally or in writing, move that, pursuant to Section 3E1.1 of the Sentencing Guidelines, the court reduce the offense level for acceptance of responsibility by two levels, or three levels if the offense level prior to application of Section 3E1.1 is 16 or greater, on the ground that Douglas Henderson timely notified authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently.
7. At the time of sentencing if Douglas Henderson's cooperation in the investigation has been completed, or otherwise within one year of the imposition of sentence, the United States Attorney will review the timeliness, nature, extent, completeness, accuracy, and truthfulness of his assistance and testimony. If the United States Attorney determines he has provided substantial assistance in the investigation or prosecution of other persons, the United States Attorney may, in her discretion, file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines or under Rule 35(b), Federal Rules of Criminal Procedure, advising the District Court of the assistance to law enforcement authorities. Mr. Henderson has no right to compel, require or expect that the United States Attorney will file such a motion, however, and the decision to reduce any sentence below the applicable guideline range or any mandatory minimum sentence is solely in the discretion of the District Court.

October 26, 2005
Page 6

8. The United States Attorney will take any position she deems appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.
 9. In the event that a term of imprisonment is imposed upon Douglas Henderson, the United States Attorney will recommend to the United States Bureau of Prisons that he be placed in a secure institution, so as to afford him all reasonable personal security. The decision to accept Mr. Henderson into said program, together with the place of confinement, is solely within the discretion of the United States Bureau of Prisons.
- C. Douglas Henderson and the United States Attorney further understand and agree to the following:
1. The maximum penalty that may be imposed upon conviction for health care fraud in violation of 18 U.S.C. §1347 is:
 - A. A term of imprisonment of not more than ten years;
 - B. A fine of \$250,000;
 - C. A term of supervised release of three years;
 - D. A special assessment under 18 U.S.C. §3013 of \$100; and
 - E. Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.
 2. The maximum penalty that may be imposed upon conviction for conspiracy in violation of 18 U.S.C. §371 is:
 - A. A term of imprisonment of 5 years;
 - B. A fine of \$250,000, or twice the gross profits or other proceeds;
 - C. A term of supervised release of three years;
 - D. A special assessment under 18 U.S.C. §3013 of \$100; and
 - E. Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.

October 26, 2005
Page 7

3. The maximum penalty that may be imposed upon conviction of income tax evasion in violation of 26 U.S.C. §7201, is:
 - A. A term of imprisonment of 5 years;
 - B. A fine of \$250,000;
 - C. A term of supervised release of three years; and
 - D. A special assessment under 18 U.S.C. §3013 of \$100.

4. The parties agree that the Sentencing Guidelines should be applied as follows in this case, with the understanding that their agreement is not binding on the Court:
 - A. The 2002 Sentencing Guidelines Book should be applied;
 - B. The relevant conduct in the nature of health care fraud should be grouped, and the offense level applicable to that conduct should be computed pursuant to Guidelines §2B1.1. Therefore, the base offense level for this conduct is six, and the offense level is increased 20 levels for the loss of more than \$7,000,000 but not more than \$20,000,000. In addition, the offense level is increased four levels for the defendant's role as an organizer or leader of criminal activity involving five or more participants, under Guidelines §3B1.1(a). The total offense level applicable to this relevant conduct is 30;
 - C. The relevant conduct in the nature of tax fraud should be grouped, and the offense level should be computed pursuant to Guidelines §§2T1.1 and 2T1.4. Based on the tax loss of more than \$400,000 but not more than \$1,000,000, the base offense level for this conduct is 20;
 - D. Under Guidelines Section 3D1.4, since there is a difference of ten levels between the total offense levels of 30 for health care fraud and 20 for tax fraud, the combined offense level for the different groups of offenses is 30;
 - E. No other adjustments of the offense level are appropriate based on the relevant conduct for which defendant bears responsibility; and

October 26, 2005
Page 8

- F. Based on the foregoing offense level computations, the government will recommend an offense level reduction of three for acceptance of responsibility (see paragraph B7, above), and accordingly the parties agree that the final offense level for defendant, Douglas Henderson, should be level 27.
5. The district court shall determine the victims and/or other persons or parties who will receive restitution as authorized by law, and the amounts.
 6. Because the offense of conviction was part of a scheme/conspiracy/pattern of criminal activity, restitution is not limited to that specific offense. The district court may order that restitution be paid to any victim, person, or party directly harmed by Douglas Henderson's criminal conduct in the course of the criminal activity.
 7. If, at any time, the United States Attorney determines that Mr. Henderson has provided any information or evidence that is not full, complete, accurate, and truthful, or that he has not provided assistance or testimony upon request, or that he has subsequently committed any additional federal, state, or local crime(s), the obligations of the United States Attorney under this agreement are terminated. In that event, the government may prosecute Mr. Henderson on any additional charges relating to the scheme to defraud deemed appropriate by the United States Attorney, notwithstanding any limitation on prosecution contained in this agreement, and it may use against him information and/or evidence obtained from him. The government may also prosecute Mr. Henderson for perjury or obstruction of justice. Any plea of guilty previously entered by him will stand, however, and he will not have the right to withdraw the plea of guilty by virtue of his breach of this agreement.
 8. The parties agree that the willful failure to pay any fine imposed by the court may be treated as a breach of this plea agreement. Mr. Henderson acknowledges that the willful failure to pay any fine may subject him to additional criminal and civil penalties under 18 U.S.C. §3611 et seq.
 9. This agreement does not preclude the government from pursuing any civil or administrative remedies against Mr. Henderson or his property.

October 26, 2005
Page 9

10. Mr. Henderson waives any former jeopardy or double jeopardy claims he may have in or as a result of any related civil or administrative actions.

This letter sets forth the full and complete terms and conditions of the agreement between Douglas Henderson and the United States Attorney for the Western District of Pennsylvania, and there are no other agreements, promises, terms or conditions, express or implied.

Very truly yours,



MARY BETH BUCHANAN
United States Attorney

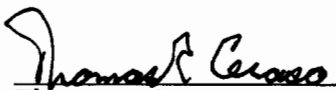
I have received this letter of nine pages from my attorney, Thomas Ceraso, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.



Douglas Henderson

Dec. 19 2005
Date

Witnessed by:



Thomas Ceraso, Esquire
Counsel for Douglas Henderson