

the Commonwealth of Pennsylvania, its institutions, and its citizens. The maximum penalty for the offense is imprisonment for a period of 5 years, a fine of \$250,000, a maximum term of supervised release of up to 5 years, to be determined by the court, which shall be served at the conclusion of and in addition to any term of imprisonment, as well as the costs of prosecution, imprisonment, probation, or supervised release order, denial of certain federal benefits and an assessment in the amount of \$100.00. At the time the guilty plea is entered, the defendant shall admit to the Court that the defendant is in fact guilty of the offense(s) charged in that count. The costs of prosecution include the cost of medical and chiropractic experts retained by the United States. After sentencing, the United States will move for dismissal of any remaining counts. The defendant agrees, however, that the United States may at its sole election reinstate any dismissed counts in the event that the charge(s) to which the defendant has pleaded guilty pursuant to this agreement are subsequently vacated or set aside by the district court or any appellate court. The defendant further agrees to waive any defenses to the reinstatement of these charges based upon, laches, the assertion of speedy trial rights, any applicable statute of limitations or any other grounds in the event that the defendant successfully vacates or sets aside any conviction or sentence imposed pursuant to this plea agreement.

2. The defendant also understands that the Court must impose a term of supervised release following any sentence of imprisonment exceeding one (1) year, or when required by statute. The Court may require a term of supervised release in any other case.

3. The defendant understands that the total, maximum possible sentence for all charges is the combination of penalties described above; that is 5 years in prison and/or fines totaling \$250,000, a term of supervised release to be determined by the Court, the costs of prosecution, denial of certain federal benefits and an assessment totaling \$100.00.

4. The defendant understands that the Court may impose a fine pursuant to the Sentencing Reform Act of 1984. The willful failure to pay any fine imposed by the Court, in full, may be considered a breach of this plea agreement. Further, the defendant acknowledges that willful failure to pay the fine may subject the defendant to additional criminal violations and civil penalties pursuant to Title 18, United States Code, Section 3611, et seq.

5. The defendant understands that under the alternative fine section of Title 18, United States Code, Section 3571, the maximum fine quoted above may be increased if the District Court finds that any person derived pecuniary gain or suffered pecuniary loss from the offense and that the maximum fine to be imposed,

if the Court elects to proceed in this fashion, could be twice the amount of the gross gain or twice the amount of the gross loss resulting from the offense.

6. If the Court awards a fine or restitution as part of the defendant's sentence, and the sentence includes a term of imprisonment, the defendant agrees to voluntarily enter the United States Bureau of Prisons-administered program known as the Inmate Financial Responsibility Program through which the Bureau of Prisons will collect up to 50% of the defendant's prison salary and apply those amounts on the defendant's behalf to the payment of the outstanding fine and restitution orders.

7. The defendant understands that the Court will impose a special assessment of \$100.00 pursuant to the provisions of Title 18, United States Code, Section 3013. No later than the date of sentencing, the defendant or defendant's counsel shall mail a check in payment of the special assessment directly to the Clerk, United States District Court Middle District of Pennsylvania. This check should be made payable to "Clerk, United States District Court". Counsel for the defendant shall provide a copy of the special assessment check to the United States Attorney's Office for the Middle District of Pennsylvania at the time of sentencing certifying compliance with this provision of the plea agreement. If the defendant intentionally fails to make this payment, or pays with an insufficient

funds check, it is understood that this failure may be treated as a breach of this plea agreement and may result in further prosecution or the filing of additional criminal charges.

8. The defendant agrees, as a part of this agreement, to submit to interviews by the United States Attorney's Office's Financial Litigation Unit regarding the defendant's financial status. Pursuant to Title 18, United States Code, Section 3664 (d)(3) the defendant also agrees to complete the required financial affidavit, fully describing the defendant's financial resources within 10 days of the guilty plea. The defendant will submit the original affidavit, on forms prescribed by the probation office, to the U.S. Probation Office with a copy to the United States Attorney's office.

9. The United States Attorney's Office for the Middle District of Pennsylvania agrees that they will not bring any other criminal charges against the defendant directly arising out of the defendant's involvement in the offense described above. However, nothing in this agreement will limit prosecution for criminal tax charges, if any, arising out of those offenses.

10. Counsel for the defendant has affirmatively indicated to the United States Attorney's Office that the defendant not only wishes to plead guilty, but will clearly demonstrate a recognition and affirmative acceptance of responsibility as

required by the sentencing guidelines. If the defendant can adequately demonstrate this recognition and affirmative acceptance of responsibility to the Government, the United States Attorney's Office will recommend that the defendant receive a two-level reduction in the defendant's offense level for acceptance of responsibility. The failure of the Court to find that the defendant is entitled to a two-level reduction shall not be a basis to void this plea agreement.

11. At the time of sentencing, the United States may make a recommendation that it considers appropriate based upon the nature and circumstances of the case and the defendant's participation in the offense, and specifically reserves the right to recommend a sentence up to and including the maximum sentence of imprisonment and fine allowable, together with the cost of prosecution.

12. The defendant also understands that the United States will provide to the United States Probation Office all information in its possession which the United States deems relevant regarding the defendant's background, character, cooperation, if any, and involvement in this or other offenses.

13. The defendant understands that pursuant to the United States District Court for the Middle District of Pennsylvania "Policy for Guideline Sentencing" both the United States and defendant must communicate to the probation officer

within fourteen (14) days after disclosure of the pre-sentence report any objections they may have as to material information, sentencing classifications, sentencing guideline ranges and policy statements contained on or omitted from the report. The defendant agrees to meet with the United States at least five (5) days prior to sentencing in a good faith attempt to resolve any substantive differences. If any issues remain unresolved, they shall be communicated to the probation officer for his inclusion on an addendum to the pre-sentence report. The defendant understands that unresolved substantive objections will be decided by the court at the sentencing hearing where the standard of proof will be a preponderance of the evidence. Objections by the defendant to the pre-sentence report or the Court's rulings, will not be grounds for withdrawal of a plea of guilty.

14. The defendant understands that pursuant to the Victim and Witness Protection Act and the regulations promulgated under the Act by the Attorney General of the United States:

- (a) The victim of a crime is given the opportunity to comment on the offense and make recommendations regarding the sentence to be imposed. The defendant also understands that the victim's comments and recommendations may be different than those of the parties to this agreement.
- (b) The federal prosecutor is required to consult with victims of serious crimes to obtain their views

regarding the appropriate disposition of the case against the defendant and make the information regarding sentencing known to the Court. The defendant understands that the victim's opinions and recommendations may be different than those presented by the United States as a consequence of this agreement.

- (c) The federal prosecutor is required to "fully advocate the rights of victims on the issue of restitution unless such advocacy would unduly prolong or complicate the sentencing proceeding," and the Court is authorized to order restitution by the defendant including, but not limited to, restitution for property loss, personal injury or death.

15. At the sentencing, the United States will be permitted to bring to the Court's attention, and the Court will be permitted to consider, all relevant information with respect to the defendant's background, character and conduct including the conduct that is the subject of the charges which the United States has agreed to dismiss, and the nature and extent of the defendant's cooperation, if any. The United States will be entitled to bring to the Court's attention and the Court will be entitled to consider any failure by the defendant to fulfill any obligation under this agreement.

16. The defendant understands that the Court is not a party to and is not bound by this agreement nor any recommendations made by the parties. Thus, the

Court is free to impose upon the defendant any sentence up to and including the maximum sentence of imprisonment for 5 years, a fine of \$250,000, a maximum term of supervised release of up to 5 years, which shall be served at the conclusion of and in addition to any term of imprisonment, the costs of prosecution, denial of certain federal benefits and assessments totaling \$100.00.

17. If the Court imposes a sentence with which the defendant is dissatisfied, the defendant will not be permitted to withdraw any guilty plea for that reason alone, nor will the defendant be permitted to withdraw any pleas should the Court decline to follow any recommendations by any of the parties to this agreement.

18. The defendant Joanne M. Gallagher agrees to the entry of a permanent injunction against her, prohibiting her from practicing in the fields of chiropractic, medicine or any other health care-related field without leave of Court. The injunction is attached hereto as Exhibit One and made a part of this plea agreement.

19. The defendant agrees to surrender her license to practice chiropractic within forty-five (45) days of the filing of this agreement and to not seek reinstatement except under the terms and conditions of the permanent injunction, attached hereto as Exhibit One. The United States may in its discretion provide to

any such licensing authority any documents and information in its possession, including documents obtained by means of the grand jury.

20. Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties due from the defendant arising out of or related in any way to the offenses identified in this agreement.

21. Nothing in this agreement shall bind any other federal, state or local law enforcement agency.

22. The defendant understands that it is a condition of this plea agreement that the defendant refrain from any further violations of state, local or federal law while awaiting plea and sentencing under this agreement. The defendant acknowledges and agrees that if the government receives information that the defendant has committed new crimes while awaiting plea and /or sentencing in this case, the government may petition the Court and, if the Court finds by a preponderance of the evidence that the defendant has committed any other criminal offense while awaiting plea or sentencing, the Government shall be free at its sole election to either: A) withdraw from this agreement, or B) make any sentencing recommendations to the Court that it deems appropriate. The defendant further understands and agrees that, if the Court finds that the defendant has committed any other offense while awaiting plea or sentencing, the defendant will

not be permitted to withdraw any guilty pleas tendered pursuant to this plea agreement, and the government will be permitted to bring any additional charges which it may have against the defendant.

23. The United States is entering into this Plea Agreement with the defendant because this disposition of the matter fairly and adequately addresses the gravity of the series of offenses from which the charges are drawn, as well as the defendant's role in such offenses, thereby serving the ends of justice.

24. This document states the complete and only Plea Agreement between the United States Attorney for the Middle District of Pennsylvania and the defendant in this case, and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that is signed by all parties or on the record in Court. No other promises or inducements have been or will be made to the defendant in connection with this case, nor have any predictions or threats been made in connection with this plea. Pursuant to Rule 11 of the Federal Rules of Criminal Procedure the defendant certifies that the defendant's plea is knowing and voluntary, and is not the result of force or threats or promises apart from those promises set forth in this written plea agreement.

25. In the event that the defendant does not plead guilty, the plea is not accepted by the court, or the plea is withdrawn, the defendant agrees that she hereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence and that any statements made by her as part of plea discussions or as part of her cooperation with the government will be admissible against her without limitation in any civil or criminal proceeding.

26. The original of this agreement must be signed by the defendant and defense counsel and received by the United States Attorney's Office on or before 5:00 p.m., July 2, 2003, otherwise the offer may, in the sole discretion of the Government, be deemed withdrawn.

27. None of the terms of this agreement shall be binding on the Office of the United States Attorney for the Middle District of Pennsylvania until signed by the defendant and defense counsel and until signed by the United States Attorney.

ACKNOWLEDGMENTS

I have read this agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

June 30, 2003
Date

Joanne M. Gallagher
JOANNE M. GALLAGHER, Defendant

I am the defendant's counsel. I have carefully reviewed every part of this agreement with the defendant. To my knowledge my client's decision to enter into this agreement is an informed and voluntary one.

6/30/03
Date

Matthew R. Gover
MATTHEW R. GOVER, Esquire
Counsel for Defendant Joanne M. Gallagher

7-1-03
Date

JA Marino
THOMAS A. MARINO
United States Attorney

GADZ/gadz USAO NO. 2002R00176 June 25, 2003

Post Guidelines Plea Agreement 5/15/2003

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA :
: CIVIL NO.
Plaintiff :
:(Electronically Filed)
v. :
:(Conner, J.)
JOANNE M. GALLAGHER, :
:
Defendant :

COMPLAINT

PLAINTIFF, United States of America, by and through its attorneys Thomas A. Marino, United States Attorney for the Middle District of Pennsylvania, and Mary Catherine Frye and Gordon A.D. Zubrod, Assistant U.S. Attorneys, alleges and avers as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action by the United States for an injunction against fraud pursuant to 18 U.S.C. § 1345(a)(1)(A) and 28 U.S.C. § 1345.

VENUE

2. Venue lies in this district pursuant to 28 U.S.C. §1391(b).

PARTIES

3. Plaintiff is the United States of America.

4. Defendant is Joanne M. Gallagher, trading and doing business as Joanne M. Gallagher, D.C., Degenhart Chiropractic Health Center, and Life Expression Chiropractic (hereinafter "Joanne M. Gallagher"), residing and having her principal place of business in Hazleton, Luzerne County, Pennsylvania.

COUNT I

Injunction Against Fraud, 18 U.S.C. § 1345(a)(1)(A)

5. The United States realleges and incorporates by reference each and every allegation contained in paragraphs 1-4 above.

6. This is an action to enjoin a scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses using the mails in violation of 18 U.S.C. §1341.

7. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher sought to obtain payments from health care benefit programs and patients for manual manipulations of the spine to adjust misaligned

or displaced vertebrae, which services were not performed, and were not medically necessary.

8. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher deprived the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Northeastern Pennsylvania of the intangible right to honest services by holding herself out as competent to treat medical conditions outside the field of chiropractic, including but not limited to epilepsy and Downs Syndrome.

9. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher made misleading, deceptive, untrue and fraudulent representations in the practice of chiropractic.

10. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher committed unprofessional conduct by departing from and failing to conform to the standards of acceptable and prevailing chiropractic practice.

11. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher offered advice,

diagnosis, prognosis and treatment for non-chiropractic medical conditions, including epilepsy and Downs Syndrome, while failing to advise her patients that treatment of such conditions was outside the area of her competence.

12. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher failed to refer her patients to physicians for medically appropriate treatment.

13. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher deprived the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Pennsylvania of the intangible right to pay only for strictly defined treatments authorized by the Pennsylvania Chiropractic Act.

14. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher deprived the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Pennsylvania of the intangible right to require licensed chiropractors.

to conform to the standards of acceptable and prevailing chiropractic practice.

15. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher deprived the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Pennsylvania of the intangible right to truthfulness, honesty and integrity on the part of licensed chiropractors.

16. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher deprived the Commonwealth of Pennsylvania, the State Board of Chiropractic, Pennsylvania Medicaid and Blue Cross of Pennsylvania of the intangible right to expect licensed chiropractors to avoid making misleading, deceptive, untrue and fraudulent representations when seeking compensation from health care benefit programs.

17. In furtherance of such scheme or artifice, Defendant Joanne M. Gallagher deprived the Commonwealth of Pennsylvania of its right to have its citizens not placed at risk of death or serious bodily harm when seeking treatment from chiropractors licensed to

practice in Pennsylvania.

18. Defendant Joanne M. Gallagher has agreed to plead guilty to one count of mail fraud as a result of the conduct set forth above.

19. Defendant Joanne M. Gallagher continues to practice chiropractic at the Degenhart Chiropractic Health Center and/or Life Expression Chiropractic and is likely to continue to do so unless and until she is prevented from doing so by revocation of her license or by injunction of this Court.

WHEREFORE, the United States prays that this Honorable Court grant the following relief:

(a) Order defendant Joanne M. Gallagher to surrender her license to practice chiropractic in the Commonwealth of Pennsylvania, and her license or licenses, if any, to practice chiropractic in any other jurisdiction or jurisdictions, within forty-five (45) days of the filing of the plea agreement referenced in Paragraph 18 above;

(b) Enjoin defendant Joanne M. Gallagher from practicing chiropractic or any other medical or healing

art, science, profession or occupation the practice of which is regulated or licensed by the Bureau of Professional and Occupational Affairs of the Commonwealth of Pennsylvania, without first obtaining the license required for the practice of such profession or occupation and, in addition, complying with all regulations governing the practice of such profession or occupation, whether in her own name or under any other name.

(c) Enjoin defendant Joanne M. Gallagher from seeking restoration of her license to practice chiropractic in the Commonwealth of Pennsylvania and from applying for, obtaining or seeking restoration of a license to practice chiropractic in any other jurisdiction without leave of this Court; and

(d) Recognize that the Attorney General of the Commonwealth of Pennsylvania has standing to represent the interests of the citizens of Pennsylvania in any proceeding to modify or lift the injunction or to grant leave to defendant Joanne M. Gallagher to apply for or seek restoration of a license to practice chiropractic.

(e) Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

THOMAS A. MARINO
United States Attorney

/s/Gordon A.D. Zubrod
GORDON A.D. ZUBROD
Assistant U.S. Attorney
PA 20792
228 Walnut Street
Harrisburg, PA 17108
(717)221-4482
(717)221-2246 Facsimile
gordon.zubrod@usdoj.gov

/s/Mary Catherine Frye
MARY CATHERINE FRYE
Assistant U.S. Attorney
PA 26615
228 Walnut Street
Harrisburg, PA 17108
(717)221-4482
(717)221-2246 Facsimile
mary.catherine.frye@usdoj.gov

Date: July 1, 2003