IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
	)	
v.	)	
	)	
THE PURDUE FREDERICK COMPANY, INC., MICHAEL FRIEDMAN, HOWARD R. UDELL, AND PAUL D. GOLDENHEIM,	)	**Case No. 1:07CR00029**
	)	
Defendants.	)	

DEFENSE MEMORANDUM
CONCERNING SENTENCING OF DR. PAUL GOLDENHEIM

INTRODUCTION

This memorandum in support of the Court's acceptance of Dr. Goldenheim's guilty plea includes the following principal contentions:

1. Dr. Goldenheim's criminal conviction itself punishes him harshly and permanently. To all but those familiar with the Supreme Court's interpretation of the virtually unique misdemeanor provisions of the Food, Drug and Cosmetic Act ("FDCA"), Dr. Goldenheim's conviction creates the inevitable and indelible public impression that he acted in a blameworthy enough manner to be adjudicated a criminal. This damaging mark against Dr. Goldenheim is undeserved. There is not the slightest evidence of Dr. Goldenheim's personal culpability in the Agreed Statement of Facts.

2. The policy *assumption* underlying the FDCA's strict liability misdemeanor is that the *in terrorem* threat and reality of criminal convictions of executives like Dr. Goldenheim will assure the highest degree of strict pharmaceutical industry compliance with the law. There is no reliable way to measure whether the FDCA's misdemeanor actually induces greater compliance. Whatever the unknown degree of heightened regulatory compliance might be, the statute imposes on executives like Dr. Goldenheim a profound and deeply troubling liberty cost. Dr. Goldenheim's experience of his conviction and punishment is a deeply troubling and painful one. The many letters filed with this memorandum describe a man who absolutely adores his family and attest to Dr. Goldenheim's excellence in performing all of his willingly-accepted duties and high callings as a friend, mentor, benefactor, business executive, physician, and scientist. And yet, his insistence on placing the highest value on the safety of, and benefit to, patients as a "responsible corporate officer," has – bewilderingly – afforded him no protection from the shame of his conviction. But surely, this Court will recognize that the harshness of the conviction should be tempered by mitigation of the sentence, and that Dr. Goldenheim's record of adherence to highest professional medical, scientific and business standards and outstanding achievement in his life amply supports mitigation.

3. In the unusual circumstances of this case, punishment in the form of probation is neither deserved nor necessary to effectuate the purposes of sentencing. These unusual circumstances are as follows:

a. Unlike the defendants in the *Dotterweich*, *Park*, and many other cases involving misdemeanor violations of the FDCA, the absence of evidence of personal wrongdoing or blameworthiness in the agreed facts places Dr. Goldenheim's conviction

at, or very near, the minimum basis for strict and vicarious misdemeanor liability under the FDCA.

b. Nothing in the Agreed Statement of Facts or in the record before this Court establishes a causal link, much less a direct and proximate causal link, between the misbranding described in the Information and Agreed Statement of Facts and either: (1) harm to any patient for whom Oxycontin was prescribed, (2) harm suffered by any person by reason of diversion, misuse or abuse of Oxycontin, or (3) any financial injury to any payor for an Oxycontin prescription.

c. To the contrary, without any regulatory or legal obligation to do so, Dr. Goldenheim, Michael Friedman and Howard Udell led Purdue's extraordinarily resourceful, expensive and effective effort to combat diversion, misuse and abuse of prescription drugs, including Oxycontin.

d. The conditions of probation do not fit the circumstances of the offense or the offender.

Between January 1996 and on or about June 30, 2001, Dr. Paul Goldenheim held several high-ranking positions at The Purdue Frederick Company, Inc. ("Purdue"): Group Vice President of Scientific and Medical Affairs (1996-1999), Executive Vice President of Medical and Scientific Affairs (1999-2000), and Executive Vice President of Worldwide Research & Development (2000-2001). Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, Dr. Goldenheim has proffered his conditional guilty plea to the strict and vicarious liability misdemeanor of being a responsible corporate officer of Purdue when, contrary to Purdue's written policy, certain sales and marketing employees understated to health care providers Oxycontin's abuse liability in

violation of the misbranding provision of the FDCA. 21 U.S.C. §§ 331(a) and 333(a)(1). The factual basis for Dr. Goldenheim's criminal conviction is found exclusively in the Agreed Statement of Facts.

The plea agreement requires, subject to this Court's approval, payments of $7,500,000 to the Virginia Medicaid Fraud Unit Program Income Fund, a $5,000 fine and a $25 special assessment. All of these payments have been made in full, subject to refund in the event that this Court declines to accept the plea agreement. The plea agreement does not require the Court to impose probation, and the Presentence Report ¶ 99 confirms that the Court has discretion not to impose probation.

ARGUMENT

I. DR. GOLDENHEIM'S CONVICTION ITSELF HARSHLY PUNISHES HIM, BECAUSE THERE IS NOT THE SLIGHTEST EVIDENCE OF DR. GOLDENHEIM'S PERSONAL CULPABILITY IN THE AGREED STATEMENT OF FACTS.

A. Dr. Goldenheim's Criminal Conviction for Violating *United States v. Park's* All-But-Objectively-Impossible Standard Itself Imposes Harsh Punishment.

In *United States v. Park*, 421 U.S. 658, 673-674 (1975), the Supreme Court held that the duty imposed by the FDCA's misdemeanor provision on responsible corporate officers "requires the highest standard of foresight and vigilance, but the Act, in its criminal aspect, does not require that which is objectively impossible." Thus, a responsible corporate officer is criminally liable if he fails even through the exercise of foresight and vigilance to prevent, or promptly correct, a violation of the FDCA committed by any corporate employee unless preventing, or promptly correcting, the violation was objectively impossible. To comply with such an extremely demanding and exacting standard in any endeavor is very nearly an impossible challenge. An executive

in charge of hundreds and even thousands of employees engaged in highly-regulated and exacting scientific development, manufacturing, promotion, and distribution of pharmaceutical and other healthcare products need not be personally blameworthy in the slightest degree, and yet can be condemned as a criminal for failure to comply with this all-but-objectively-impossible standard.

There is no evidence in the Agreed Statement of Facts concerning misbranding of Oxycontin that provides any basis to conclude that Dr. Goldenheim acted, or failed to act, knowingly, intentionally, recklessly, negligently, or in any manner that was in the slightest degree personally blameworthy. By pleading guilty, Dr. Goldenheim has waived all challenges to the constitutionality, justice and wisdom of his conviction. Nevertheless, the inevitable public message the criminal conviction communicates about him is extremely harsh, because it is both undeserved and untrue.

> In its conventional and traditional applications, a criminal conviction carries with it an ineradicable connotation of moral condemnation and personal guilt. Society makes an essentially parasitic, and hence illegitimate, use of this instrument when it uses it as a means of deterrence (or compulsion) of conduct which is morally neutral. This would be true even if a statute were to be enacted proclaiming that no criminal conviction hereafter should ever be understood as casting any reflection on anybody. For statutes cannot change the meaning of words and make people stop thinking what they do think when they hear the words spoken. But it is doubly true—it is ten-fold, a hundred-fold, a thousand-fold true—when society continues to insist that some crimes *are* morally blameworthy and then tries to use the same epithet to describe conduct which is not.

Henry M. Hart, Jr., "The Aims of the Criminal Law," 23 Law and Contemporary Problems 401, 422 (1958).

Dr. Goldenheim's conviction has been covered prominently in *The New York Times, The Wall Street Journal*, on national television networks, and in other publications, many of which have been seen and read by his family, professional and

business colleagues, and friends. Virtually none of these articles indicate that the conviction is not based on Dr. Goldenheim's having engaged in personal wrongdoing. Some of the articles contain quoted statements from people equating him with an illicit drug dealer and calling him a murderer, and urging that he be imprisoned. Much of this media coverage and the conviction itself will be indelibly associated with his name through internet search engines. In the computer age, the internet pillories Dr. Goldenheim permanently and world-wide.

One can speculate that this publicity -- as erroneous as most of it has been -- will heighten efforts of pharmaceutical company executives to assure more exacting compliance with law. But one of the harshly anomalous and ironic features of Dr. Goldenheim's strict liability misdemeanor conviction is that, by definition and especially on this record, the public nature of Dr. Goldenheim's sentence cannot and does not deter or punish blameworthy conduct as there has been none here according to the Agreed Statement of Facts and so the sentence should be mitigated accordingly.

On a record devoid of evidence of his blameworthiness, Dr. Goldenheim's conviction in and of itself has, and will forever, impose very severe punishment for failure to satisfy the FDCA misdemeanor's all-but-objectively-impossible standard.

B. Dr. Goldenheim's Conviction Imposes Particularly Harsh Punishment Because His Life-Long Record of Adherence to the Highest Standards in His Professional Life Has Afforded Him No Protection From This Strict Liability Misdemeanor Conviction.

Even if his guilty plea were based on a record that included blameworthy conduct, a compelling presentation could be made that Dr. Goldenheim's sentence should be mitigated by a U.S.S.G. § 5K2.20 aberrant conduct downward departure from the applicable advisory guideline range. But, of course, the Agreed Statement of Facts does

not indicate that Dr. Goldenheim deviated from the very highest professional standards to which he has always held himself and his colleagues. Nevertheless, the rationale of the aberrant conduct provision is fully applicable here, in the sense that the Court's sentencing decision ought to mitigate the sentence by taking into account the professional life that Dr. Goldenheim has lived.

Dr. Goldenheim is 57 years old. He is a licensed physician who is a graduate of Harvard College and Harvard Medical School. He has been married to Anne Goldenheim for 29 years. They have four adult children, all of whom are thriving. As letters from his wife, daughter and others indicate, though he has always been involved in the most demanding of careers, Dr. Goldenheim has been a wonderfully supportive, involved and loving parent, husband, relative, and friend.

Until 2004, Dr. Goldenheim served as Purdue's top scientific officer. He was responsible for its research and development efforts, and its regulatory compliance and medical affairs staff reported to him. Many of the attached letters describe Dr. Goldenheim's exacting vigilance in assuring Purdue's compliance with regulations, and the highest priority that he always placed on patient safety. While at Purdue, and since, Dr. Goldenheim did not hesitate to halt clinical trials or delay research programs when there was any question about patient safety or regulatory correctness, even when these actions caused significant research delays and financial hardship for the company. "We received results of an animal study that may have had the potential of putting human subjects at safety risk. Dr. Goldenheim immediately halted our ongoing clinical trials…His actions backed up his insistence that patient safety was paramount."(Soares) "During the development of the product, a study was conducted in healthy volunteers and

found an unexpected degree of liver function elevation in the subjects. Paul authorized two more clinical studies and a number of animal experiments to help elucidate the initial finding despite canceling the development of the product...The point here is this was done after we had made the determination that these products would not be developed by Purdue." (Kramer).

With respect to the vigilance and foresight demanded of him by the FDCA, Dr. Goldenheim demanded throughout his career that patient interests always remain paramount by implementing procedures, policies and directives to staff insisting that "…good news was to travel fast, but bad news was to travel faster." (Chasin). He was exacting in his desire for precise communication. "In short, I cannot imagine anyone less likely to make a misrepresentation than Paul." (Henneberry) When put in charge of Quality he performed in an exemplary fashion. "In every case, his solution was the honest and ethical one even if the solution had potential consequences to existing business or future business." (Sena) In all these areas, he led by personal example. He was "…one of the finest role models for executive leadership that I have worked with… his operating style was one of openness, trust and high ethical standards." (Carter). "I have never been associated with a CEO who has been more cognizant of the regulatory process or more committed to following the letter of the regulations than Paul Goldenheim." (Vozella). Dr. Goldenheim is described as "…a scientist who was dedicated to conducting research to the highest possible standards, to insuring the highest possible level of regulatory compliance, and holding his staff accountable to these same standards. I never once saw Paul compromise that dedication or those standards." (Croswell)

As detailed in Purdue's sentencing memorandum, Dr. Goldenheim and his colleagues went far beyond regulatory requirements in creating and leading resourceful, innovative, expensive and effective programs to combat prescription drug abuse and diversion. Dr. Goldenheim and his staff were particularly involved in conceiving and implementing the RADARS program, a national surveillance program that tracks the incidence of abuse and diversion of various opioid analgesics by gathering localized epidemiological data. This program has received wide praise. In addition, as Purdue's top scientific officer, Dr. Goldenheim spearheaded the company's massive research and development effort to develop a dosage form that would treat pain when used as directed, but provide no euphoric effect if tampered with by chewing, crushing, etc. Purdue has spent more than $200 million dollars on that effort under the leadership of Michael Friedman, Howard Udell and Dr. Goldenheim. There is reason to hope that effort will eventually contribute to finding the much-sought goal of a scientifically-devised barrier against diversion and abuse of prescription opioid medications.

This exemplary professional record of vigilance, achievement and responsibility has afforded Dr. Goldenheim no protection from conviction under the strict liability statute. But, manifestly, his impressive record of extraordinarily high achievement while insisting on the adherence to the highest standards of integrity in all aspects of his professional career should have a significant mitigating effect on the sentence.

II. PROBATION IS NEITHER NECESSARY TO EFFECTUATE THE PURPOSES OF SENTENCING, NOR IS IT DESERVED.

The presentence report correctly indicates that the Court has discretion not to impose probation as punishment in a case such as Dr. Goldenheim's in which the

advisory guideline range is within Zone A of the Sentencing Table. U.S.S.G. § 5B1.1(a)(1) provides that "a sentence of probation is authorized" if the applicable guideline range is in Zone A of the sentencing table. Application Note 1 makes it clear that probation is merely authorized, but not required, if the guideline range is in Zone A. The Sentencing Reform Act, 18 U.S.C. § 3561, also indicates probation is discretionary in that it provides that "[a] defendant may be sentenced to a term of probation ..." Section 3562 provides that "in determining whether to impose a term of probation, and if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, [a court] shall consider the factors set forth in section 3553(a) to the extent that they are applicable." (emphasis supplied).

> In exercising this discretion, 18 U.S.C. § 3553(a) obliges the Court "to impose a sentence sufficient, but not greater than necessary," to comply with the purposes of sentencing, in view of the "nature and circumstances of the offense and characteristics of the defendant." On this record, the nature and circumstances of the offense and the seriousness of Dr. Goldenheim's strict liability offense are at the end of the scale of federal criminal offenses reserved for the least punishment. There is no need to impose probation in view of the relatively low seriousness of this misdemeanor offense. In light of the more than sufficient impact of the conviction itself on both Dr. Goldenheim and on pharmaceutical industry executives, probation is not necessary to promote respect for law, particularly when the record is devoid of evidence that Dr. Goldenheim has ever shown anything other than the utmost respect for the law. **A. Unlike The Defendants In The *Dotterweich, Park,* And Many Other Cases Involving Misdemeanor Violations Of The FDCA, The Absence Of Evidence Of Personal Wrongdoing Or Blameworthiness In The Agreed Facts Places Dr. Goldenheim's Conviction At, Or Very Near, The Minimum and Most Mitigating Basis For Strict And Vicarious Misdemeanor Liability Under The FDCA.**

The Agreed Statement of Facts upon which Dr. Goldenheim's conviction is premised includes the barest factual basis for strict and vicarious misdemeanor liability under the FDCA.

> Perhaps the most troubling of the issues that flow from *Park* is how to treat the officer of a very large corporation who was not involved in or even aware of the violation. *Dotterweich* may be explained on the ground that it was a small corporation and the defendant directly supervised the activity in question. Although *Park* involved a very large corporation and the defendant was remote from the violative conduct, there was specific evidence in the case of his culpability in his failure to take sufficient remedial steps after he was informed of the violations. The test case would be a prosecution against a high official of a large corporation who is in the chain of command over the violative conduct but remote from the activity in question, and there is no specific evidence that he was aware of the violation and no particular culpability in his failure to be aware.
>
> [49] *Compare United States v. Park*, 421 U.S. 658, 677 n.19 (1975): Assuming, *arguendo*, that it would be objectively impossible for a senior corporate agent to control fully day-to-day conditions in 874 retail outlets, it does not follow that such a corporate agent could not prevent or remedy promptly violations of elementary sanitary conditions in 16 regional warehouses.

Norman Abrams, "Criminal Liability of Corporate Officers for Strict Liability Offenses – A Comment on *Dotterweich* and *Park*," 28 UCLA L.Rev. 463, 476-477 (1981). There is nothing in the Agreed Statement of Facts indicating that Dr. Goldenheim was aware of the misbranding violations, much less any evidence that he failed to promptly correct a violation when it came to his attention. Unlike the *Park* case, where the executive knew that the company had received an FDA warning letter but failed to assure that his delegates remedied the violation, the FDA issued no warning letter concerning the misbranding identified in the Agreed Statement of Facts. Neither does the Agreed Statement of Facts indicate that Dr. Goldenheim was culpable in his failure to be aware of the misbranding.

By pleading guilty based on the Agreed Statement of Facts, Dr. Goldenheim has accepted an extremely minimal and even strained criminal liability. The imposition of probation would not fit the nature, circumstances, or low level of seriousness of this misdemeanor.

B. Nothing in the Record Establishes that Dr. Goldenheim's Strict Liability Offense Harmed Patients, or Payors for Oxycontin Prescriptions, or Caused Harm Attributed to Diversion and Abuse of Oxycontin.

Surely, if during its long and intensive investigation, the government had found evidence causally linking Dr. Goldenheim's strict liability misdemeanor offense to harm to patients, to payors for Oxycontin prescriptions, or to persons who were harmed by diversion and abuse of Oxycontin, it would have presented that evidence to the Court. There is no such evidence. There is no evidence in this record that even a single prescription would not have been issued but for the misbranding described in the Agreed Statement of Facts, much less that any such prescription was causally related to harm to any patient, or to any persons harmed by diversion or abuse of Oxycontin.

The Court has received letters and may hear orally from persons who assert that Dr. Goldenheim's strict liability misdemeanor offense caused them or a loved one to be harmed. It is appropriate for this memorandum to respond. To be sure, like all medications, the proper use of OxyContin has sometimes been associated with seriously harmful side effects which are described in the FDA-approved label. Oxycodone, the active opioid ingredient in OxyContin, had been used by the medical profession for decades before OxyContin was available. The side effects were already well known. The Court should recognize the difference in significance between adverse events during on-label use (the risk and incidence of which the FDA monitors and considers acceptable when weighed against Oxycontin's therapeutic benefits) and, in the case of opioids (and other controlled medications), the more serious, harm from misuse or abuse.[1] Moreover,

[1] The defendants' response to the Court's written questions acknowledged "the tremendous harm that has resulted from the use, misuse, or abuse of OxyContin." (emphasis supplied). The foregoing paragraph clarifies what this statement meant when it referred to harm from use of Oxycontin.

the FDA has considered the incidence and harm resulting from diversion, abuse and misuse of Oxycontin has declined to limit its approved indications.

The Court is urged to ascribe significant weight to letters, attached hereto, from Dr. Kathleen Foley and Dr. Roger Weiss. Dr. Foley is Attending Neurologist on the Pain & Palliative Care Service at the world-renowned Memorial Sloan-Kettering Cancer Center where she holds The Society of Memorial Sloan-Kettering Cancer Center Chair in Pain Research and also Professor of Neurology, Neuroscience and Clinical Pharmacology at the Weill Medical College of Cornell University, both of which are in New York City. Dr. Roger Weiss is a Professor of Psychiatry at the Harvard Medical School and Clinical Director of the Alcohol and Drug Abuse Treatment Program at McLean Hospital, which is a Harvard Medical School Teaching Hospital and an affiliate of Massachusetts General Hospital. Both of these scientific and medical authorities state, among other things, that: (1) iatrogenic addiction[2] from use of OxyContin (or other opioids) is extremely rare; and (2) the incidence of diversion and abuse of OxyContin is not causally related to Purdue's promotional activity.

C. Probation Should Not Be Imposed Because It Is Not Necessary to Fulfill the Purposes of Sentencing and Probation Does Not Fit the Unusual Circumstances of Dr. Goldenheim's Case.

In *Griffin v. Wisconsin*, 483 U.S. 868, 874-875 (1987), the Supreme Court described probation as follows:

> Probation, like incarceration, is "a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty." G. Killinger, H. Kerper, & P. Cromwell, Probation and Parole in the Criminal Justice System 14 (1976); see also 18 U. S. C. § 3651 (1982 ed. and Supp. III) (probation imposed instead of imprisonment); Wis. Stat.

[2] Iatrogenic addiction means addiction developing from the use of an opioid analgesic by an individual with no previous history of any addiction, who has lawfully obtained and used the drug for a legitimate medical purpose under the direction of a physician

> § 973.09 (1985-1986) (same). Probation is simply one point (or, more accurately, one set of points) on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service. A number of different options lie between those extremes, including confinement in a medium- or minimum-security facility, work-release programs, "halfway houses," and probation -- which can itself be more or less confining depending upon the number and severity of restrictions imposed. See, *e. g.*, 18 U. S. C. § 3563 (1982 ed., Supp. III) (effective Nov. 1, 1987) (probation conditions authorized in federal system include requiring probationers to avoid commission of other crimes; to pursue employment; to avoid certain occupations, places, and people; to spend evenings or weekends in prison; and to avoid narcotics or excessive use of alcohol). To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." *Morrissey* v. *Brewer*, 408 U.S. 471, 480 (1972).
>
> These restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. See *State* v. *Tarrell*, 74 Wis. 2d 647, 652-653, 247 N. W. 2d 696, 700 (1976). These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed. Recent research suggests that more intensive supervision can reduce recidivism, see Petersilia, Probation and Felony Offenders, 49 Fed. Probation 9 (June 1985), and the importance of supervision has grown as probation has become an increasingly common sentence for those convicted of serious crimes, see *id*., at 4.[3]

Similarly, in *Burns v. United States*, 287 U.S. 216, 220, (1932), the Court held that probation "was designed to provide a period of grace in order to aid the rehabilitation of a penitent offender; to take advantage of an opportunity for reformation which actual service of the suspended sentence might make less probable." *Burns v. United States*, 287 U.S. 216, 220 (1932). *See also Frad v. Kelly*, 302 U.S. 312, 318 (1937) (describing probation as "a system of tutelage"); *Berman v. United States*, 302 U.S. 211, 213 (1937) (probation is "concerned with rehabilitation, not with the

[3] In *Griffin*, the issue before the Court was whether a search of a probationer's home pursuant to Wisconsin law was permissible under the Fourth Amendment.

determination of guilt" and "comes as an act of grace to one convicted of a crime") (citation omitted). More recently, the Court described probation as a form of "conditional liberty." *Black v. Romano*, 471 U.S. 606, 611 (1985); *see also United States v. Beech-Nut Nutrition Corp.*, 925 F.2d 604, 608 (2d Cir. 1991) ("Probation does not confer upon a convicted defendant the absolute liberty which ordinary citizens enjoy. Neither is a person on probation a prisoner absent the walls.").

The purpose of probation can also be gleaned from 18 U.S.C. § 3563 which provides for the terms of probation, some of which are mandatory, and which, for defendants convicted of misdemeanors, include: (1) that the defendant not commit another federal, state or local crime during the period of probation, (2) that the defendant not unlawfully possess a controlled substance, (3) that the defendant submit to a drug test within 15 days after probation, and two follow up tests for use of a controlled substance unless the defendant's PSR or other information indicates a low risk of future drug abuse by the defendant, (4) that the defendant make restitution as ordered under an applicable restitution statute and pay the assessment required under 18 U.S.C. § 3013 ($25 for a Class A misdemeanor), and (5) that the defendant notify the court of any material change in the defendant's economic status that might affect the defendant's ability to pay restitution, fines or special assessments. The discretionary conditions set forth in §3563(b) can only be imposed if "reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2)[.]"

There is no reason to subject Dr. Goldenheim to probation, as if it is necessary or appropriate to restrict his liberty by supervising him, or to rehabilitate him. Dr. Goldenheim presents no risk of recidivism, the fine and other agreed payments have been paid in full, and he is not in need of any services that the probation office frequently provides to offenders. As we have noted, the conviction itself is more than harsh enough punishment.

CONCLUSION

For all the foregoing reasons, this Court should accept Dr. Goldenheim's guilty plea and, in accordance with the plea agreement, impose as the exclusive provisions of the sentence the payments that have already been paid in full.

DATED: July 16, 2007

Respectfully submitted,

/s/Andrew Good
Andrew Good (MA BBO 201240)
Good & Cormier
83 Atlantic Avenue
Boston, MA 02110
(617) 523-5933

Counsel for Paul D. Goldenheim

CERTIFICATE OF SERVICE

I, Andrew Good, hereby certify that a copy of the foregoing document will be sent electronically to the following registered participants as identified on the Notice of Electronic Filing (NEF).

Michael Allen Bragg

John Leslie Brownlee

Sharon Burnham

Rick A. Mountcastle

David S. Nalven

Mark F. Pomerantz

Steven Randall Ramseyer

Howard M. Shapiro

Peter D. St. Phillip, Jr.

Elizabeth Stein

Barbara Wells

Mary Jo White

DATED: July 16, 2007

/s/ Andrew Good
Andrew Good

G:\Clients\Goldenheim\Sentencing\Defense memo\sentencing memo FINAL.doc