

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

UNITED STATES OF AMERICA : Case No. 1:12-cr-043(3)  
Plaintiff : (JUDGE MICHAEL R. BARRETT)  
Vs. : **SENTENCING MEMORANDUM**  
JOHN A. DAHLSTEN :  
Defendant :

The Defendant, John A. Dahlsten, is scheduled for sentencing on May 21, 2014. Counsel for Dr. Dahlsten submits this memorandum for the court's consideration in imposing an appropriate sentence.

**/s/ Merlyn D Shiverdecker**  
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Attorney for John A. Dahlsten  
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**MEMORANDUM**

**Offense Conduct**

Counsel for Dr. Dahlsten and Dr. Dahlsten have reviewed the final PreSentence Report, and have no objection to the guideline calculation contained therein. The Defendant does request the Court to consider a downward departure or variance pursuant to U.S.S.G. Subsection 5H1.4.

The objection of Dr. Dahlsten is to the recommendation of the probation department for a sentence of 8 months incarceration. Dr. Dahlsten requests this Court to consider a non-custodial sentence.

The PreSentence Report at paragraph 137 states in part as follows:

“The Defendant continued to write prescriptions even after being informed by investigators that his DEA number had expired. Therefore, the Court may wish to consider that this is a factor which may warrant an upward deviation.”

The sentencing recommendation on page 2 also states:

“The defendant was not treating his patients in a manner which was in their best interests. Therefore, an upward variance to a prison sentence of 8 months is being recommended....”

It is true that Dr. Dahlsten wrote prescriptions after his DEA registration expired.

Dr. Dahlsten had been issued his most recent Controlled Substance Registration Certificate by the DEA and a corresponding DEA Registration number on June 2, 2006. The registration expired on June 30, 2009. Dr. Dahlsten forgot that the Certificate needed to be renewed and does not recall receiving any notice informing him of the expiration date or the need to renew.

On July 20, 2009, DEA Agent Kresnak called SOCPM in an attempt to speak to Dr. Dahlsten about his DEA registration. Instead, Tracy Bias got on the phone and advised Agent Kresnak that he (Bias) had talked to his lawyer Steve Hillman who advised that Dr. Dahlsten could continue to write prescriptions and that Dr. Dahlsten would not be available to be interviewed by DEA. Dr. Dahlsten went on line to renew his DEA registration and paid the renewal fees.

Later on July 20, 2009 at approximately 5:15 p.m. Agent Kresnak contacted Dr. Dahlsten in person and advised Dr. Dahlsten that his DEA registration had expired and he could not write prescriptions pending renewal. The prescriptions of Dr. Dahlsten provided in discovery reflect that Dr. Dahlsten did not write any prescriptions after July 20, 2009.

On July 28, 2009, Agent Kresnak called Dr. Dahlsten in Iowa. Dr. Dahlsten informed Kresnak that he quit working at the SOCPM. They agreed to a meeting to be set up in Iowa. Dr.

Dahlsten worked at SOCPM for approximately two months from May 20, 2009 until July 20, 2009.

On August 6, 2009, Dr. Dahlsten met with DEA Agents Kresnak and Cox at his attorney, Eric Benne's office in Burlington, Iowa. Dr. Dahlsten submitted to a several hour interview about Tracy Bias and the SOCPM clinic. In addition, Dr. Dahlsten voluntarily surrendered his Drug Enforcement Administration Certificate of Registration by executing the applicable form which provided in pertinent part as follows:

"In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part..."

Dr. Dahlsten received a "target" letter dated march 24, 2010 and Counsel was retained on or about April 5, 2010. Counsel then contacted Tim Oakley of the U.S. Attorney's office and meetings were then scheduled to interview Dr. Dahlsten. Dr. Dahlsten agreed to cooperate with the government and provide whatever assistance he could. Dr. Dahlsten in fact testified for the government in its case against Hillman.

The gravamen of the offense in this case is that the SOCPM clinic and the physicians wrote prescriptions without always conducting meaningful examinations in order to ascertain whether the prescription was for a legitimate medical purpose and within the scope of ordinary medical practice. The conduct of the Defendant upon which the probation department recommends an upward variance is required in this case for the commission of the offense and makes Dr. Dahlsten's conduct in and of itself no more or less egregious than conduct normally constituting the offense.

Offender

Dr. Dahlsten is now 57 years old, divorced, living alone and has significant, permanent

disabilities and health issues.

His life by all standards seemed to be going well until February 21, 1996 when he had his stroke. He was 39 years old, married, 4 small children, and a well respected , successful doctor.

All of a sudden, his whole life went to hell in a hand basket. The PreSentence Report, paragraphs 90-100 sets forth Dr. Dahlsten's physical condition.

At first, Dr. Dahlsten's brain was swelling which led the doctors to fear his condition could develop into a life threatening condition. After five weeks in Frye Regional Medical Center Dr. Dahlsten was transferred to the Charlotte Institute for Inpatient Rehabilitation Services. After being discharge from the institute Dr. Dahlsten commenced long term out-patient rehabilitation services.

It was Dr. Dahlsten's goal to return to the practice of anesthesiology. He successfully completed the Occupational and Environmental medicine residency at U.C. in July, 2001. It was not meant to be. The stroke had significant permanent detrimental effects both physically and mentally that prohibited his return to the practice of anesthesiology. Depression and anxiety followed.

Neuropsychological evaluations in 1997, 1998 and 2001 reflected the following:

- left side weakness and incoordination (defendant moves slowly with a limp)
- motor and tactile problems
- difficulties in planning, organization and execution of tasks

"Tests results revealed a full scale I.Q. in the average range which as believed to be a gross underestimate of his pre-stroke level of function."

- depression due to limitations after stroke
- depression and anxiety due to an inability to return to an active clinical practice in

anesthesiology

- inability to write legibly

According to Dr. Erik Powell, Dr. Dahlsten's primary care physician, Dr. Dahlsten suffered from the following medical conditions:

"According to the defendant, he presently takes Warfarin (Coumadin) for Leiden V deficiency (not breaking down clots normally). To address post-stroke spasticity in his left leg, he is prescribed Tizanidine, Dantroline, Ibuprofen, Tylenol, and Botox injections. The defendant has chronic constipation and uses Amitiza, generic Go-Lytely, Milk of Magnesia, and Sennekot for his condition. Lisinopril and Hydrochlorothiazide are used to treat his high blood pressure while Lipitor, Niacin and fish oil are taken for a lipid disorder. He also revealed after his stroke, he has a poor memory; becomes frustrated easily; has a loss of sensation in his left hand; is unable to use his right upper extremities normally; has left leg spastic calf muscles with weakness and tires easily. He finds it takes more effort to perform all tasks.

U.S.S.G. Subsection 5H1.4 provides in pertinent part as follows:

"Physical Condition, Including Drug or Alcohol Dependence or Abuses; Gambling Addition (Policy Statement)

Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. An extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment."

It is respectfully submitted that Dr. Dahlsten's well documented medical condition, both physically and psychologically, is present to an unusual degree and distinguishes this case from the typical cases covered by the guideline. The guidelines recognize that in certain cases, "home detention may be as efficient as, and less costly than imprisonment."

Due to his physical and mental limitations, Dr. Dahlsten lives a very simplistic life. He

is limited in what he can do. He lives alone, in a single floor plan condominium. His primary interests are church and church related activities at the Christian Life Center in Mt. Carmel. Besides attending regular Sunday services and Bible Study, Dr. Dahlsten volunteers at the “food pantry” on Wednesdays and Sundays. He enjoys gardening, cooking and reading. It is reported that he makes an outstanding caramel pecan cheesecake.

Not an excuse.

From the time Dr. Dahlsten was in grade school he knew he wanted to be a physician. He was a bright and accomplished student, having been awarded membership in Phi Beta Kappa and the recipient of other honorary awards and scholarships. Dr. George Bauer “spoke glowingly” of Dr. Dahlsten’s record in medical school. He was an honor level student.

Dr. Dahlsten’s brother, William, feels that Dr. Dahlsten’s judgment is not as good as it was prior to his stroke. William felt that Dr. Dahlsten “wanted to prove that he could work again” and that is why he responded to a “Locum Tenens U.S.A.” internet posting for employment and went to work at the SOCPM.

Dr. Dahlsten would typically drive from Iowa to Portsmouth on Sunday, work all week staying in a motel, and then drive back to Iowa on Friday night. Dr. Dahlsten was paid \$100.00 per hour.

It is reasonable to infer that Dr. Dahlsten’s judgment was clouded by his desire to still be a productive practicing physician. This desire accompanied by his physical and mental impairments, made Dr. Dahlsten particularly susceptible and vulnerable to accepting employment at SOCPM.

#### Conclusion

After Dr. Dahlsten quit the clinic and with the assistance of counsel Dr. Dahlsten

cooperated with the government in any manner requested. He attempted to make amends for the error of his ways.

What sentence is “sufficient, but not greater than necessary” to accomplish the purposes of sentencing. The inability to practice his chosen profession, the practice of medicine is in and of itself a significant and substantial penalty. With no DEA permit and or license to practice medicine, recidivism it not an issue.

Dr. Dahlsten did not own any proprietary interest in the SOCPM clinic. He did not manage, supervise or control the activities of others at the clinic. He was a temporary hourly employee.

When taking into consideration the nature and circumstances of Dr. Dahlsten’s short term involvement in the offense and the history and characteristics of Dr. Dahlsten, it is respectfully requested that the Court impose a sentence of probation with whatever other conditions the Court feels are appropriate.

Respectfully submitted,

**/s/ Merlyn D Shiverdecker**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via this Court’s electronic filing system on all counsel of record on this 15th day of May, 2014.

**/s/ Merlyn D Shiverdecker**

Merlyn D Shiverdecker

Attorney for John A. Dahlsten