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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW COLE (1),
SHIREEN COLE (2),

Defendants.

Case No. 15cr 3074-H

I N F O R M A T I O N

Title 21, U.S.C., Secs. 843(a)(3),
843(d)(1), and 846 - Conspiracy to
Acquire Controlled Substances by
Fraud, Deception, and Subterfuge.

The United States Attorney charges:

COUNT 1

CONSPIRACY TO ACQUIRE AND OBTAIN POSSESSION OF CONTROLLED
SUBSTANCES BY FRAUD, DECEPTION AND SUBTERFUGE

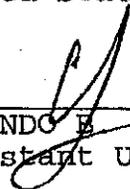
Beginning on a date unknown, continuing up to and including
March 12, 2015, within the Southern District of California, and
elsewhere, defendants MATTHEW COLE and SHIREEN COLE, did knowingly
and intentionally conspire with other persons known and unknown, to
acquire and obtain possession of controlled substances by
misrepresentation, fraud, forgery, deception, and subterfuge, to

OBG:obg:San Diego
12/15/15

1 wit: oxycodone (Schedule II), zolpidem tartrate (Schedule IV), and
2 alprazolam (Schedule IV); in violation of Title 21, United States
3 Code, Sections 843(a)(3), 843(d)(1), and 846.

4
5 DATED: December 15, 2015.

6 LAURA E. DUFFY
7 United States Attorney

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11 ORLANDO E. GUTIERREZ
12 Assistant U.S. Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 15CR3074-H
)	
Plaintiff,)	San Diego, California
)	
vs.)	Tuesday,
)	December 15, 2015
MATTHEW COLE and SHIREEN)	2:30 p.m.
COLE,)	
)	
Defendants.)	

TRANSCRIPT OF INITIAL APPEARANCE/ARRAIGNMENT/CHANGE OF PLEA
BEFORE THE HONORABLE JILL L. BURKHARDT
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	ORLANDO B. GUTIERREZ, ESQ. Office of the United States Attorney 880 Front Street, Suite 6293 San Diego, California 92101
For the Defendant Matthew Cole:	MICHAEL J. KHOURI, ESQ. Khouri Law Firm 24012 Calle De La Plata Suite 210 Laguna Hills, California 92653 (949) 336-2433
For the Defendant Shireen Cole:	MICHAEL D. NASATIR, ESQ. Nasatir, Hirsch, Podberesky & Khero 2115 Main Street Santa Monica, California 90405 (310) 399-3259

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 SAN DIEGO, CALIFORNIA TUESDAY, DECEMBER 15, 2015 2:30 P.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Calling matter 1B from the regular
5 calendar, 15CR3074-H, United States of America versus Matthew
6 Cole and Shireen Cole, set for initial appearance,
7 arraignment and change of plea.

8 MR. GUTIERREZ: Good afternoon, your Honor.
9 Orlando Gutierrez on behalf of the United States.

10 THE COURT: Good afternoon, Mr. Gutierrez.

11 MR. KHOURI: Good afternoon, your Honor. My name
12 is Mike Khouri, spelled K-H-O-U-R-I, and I am Matthew Cole's
13 retained lawyer. I haven't filed an appearance yet because I
14 think the Information was just filed right now in court.

15 THE COURT: Okay. But you're prepared to make a
16 general appearance today?

17 MR. KHOURI: I am, your Honor, and I am making a
18 general appearance on behalf of Doctor Cole, who's present in
19 court.

20 THE COURT: Dr. Cole. Mr. Khouri.

21 MR. NASATIR: Good afternoon, your Honor. My name
22 is Michael Nasatir, N-A-S-A-T-I-R, and I represent Shireen
23 Cole, and my comments would be the same as Mr. Khouri's.

24 THE COURT: You're making a general appearance
25 again?

1 MR. NASATIR: Yes, your Honor.

2 THE COURT: Okay. Ms. Cole. Mr. Nasatir.

3 (Pause.)

4 THE CLERK: Is Matthew Cole your true name?

5 MR. COLE: Yes.

6 THE CLERK: And is Shireen Cole your true name?

7 MS. COLE: Yes.

8 THE CLERK: You were each advised that you have a
9 right to have these charges presented to the Grand Jury for
10 indictment, or you may waive indictment and allow the United
11 States Attorney to file these charges by way of information.

12 Mr. Cole, do you desire to waive indictment?

13 MR. COLE: Yes.

14 THE CLERK: And did you sign the waiver form?

15 MR. COLE: Yes.

16 THE CLERK: Ms. Cole, do you desire to waive
17 indictment?

18 MS. COLE: Yes.

19 THE CLERK: And did you sign the waiver form?

20 MS. COLE: Yes.

21 THE CLERK: You were each informed that an
22 information has been filed charging you with conspiracy to
23 acquire controlled substances by fraud, deception and
24 subterfuge.

25 Counsel, have you each received a copy of the

1 Information, and do you waive further reading?

2 MR. NASATIR: Yes on behalf of Shireen Cole.

3 MR. KHOURI: Same on behalf of Mr. Cole.

4 THE CLERK: You were each also informed that you
5 have the right to be represented by counsel at all
6 proceedings before the Court, you have the right to remain
7 silent, you have the right to a trial by jury, you have the
8 right to confront and cross-examine any witnesses who testify
9 against you, and you have the right to have witnesses
10 subpoenaed to testify in your behalf.

11 How do you each now plead to the count of the
12 Information, are you guilty or not guilty, Mr. Cole?

13 MR. COLE: Guilty.

14 THE CLERK: Ms. Cole?

15 MS. COLE: Guilty.

16 THE CLERK: Could you each please raise your right
17 hands.

18 Do you solemnly swear that the evidence you shall
19 give in the cause now before the Court shall be the truth,
20 the whole truth and nothing but the truth?

21 MR. COLE: Yes.

22 MS. COLE: Yes.

23 THE CLERK: Thank you.

24 THE COURT: You may be seated. All right. Each of
25 you is here today because you've been charged with a criminal

1 Information. You're not required to make any statement about
2 the charges against you. In fact, any statements you do make
3 in open court can be used against you. You have the right to
4 be represented by an attorney. If you cannot afford to hire
5 an attorney, you have the right to have one appointed to
6 represent you at no cost to you.

7 Are both the Coles United States citizens?

8 MR. KHOURI: Yes, your Honor.

9 MR. NASATIR: Yes, your Honor.

10 THE CLERK: You have the right to bail unless the
11 Government moves to detain you and there is good cause to
12 hold you without bail. If you are released on bail, you will
13 be required to comply with the following conditions. You're
14 not to commit any federal, state or local crimes. You're to
15 make all your court appearance. Your travel within the
16 United States will be restricted, and you are not to enter
17 the Republic of Mexico. You are to report to Pretrial
18 Services as directed by a Pretrial Services Officer. You are
19 not to use or possess any narcotic controlled substance
20 without a valid prescription. You are not to possess any
21 firearm, dangerous weapon or destructive device. You are to
22 read or have explained to you and acknowledge your
23 understanding of the Advice of Counsel and Sanctions form.
24 You are to provide your full and current resident address and
25 phone number, and you are to keep those current during the

1 time the case is pending. You are to seek and maintain full-
2 time employment, schooling or both as directed by Pretrial
3 Services. And you are to comply with any other conditions
4 that I set in your case.

5 Is Shireen Cole your true name?

6 MS. COLE: Yes.

7 THE COURT: Is Matthew Cole your true name?

8 MR. COLE: Yes, it is, your Honor.

9 THE COURT: Okay. Each of you is advised that
10 you've been charged by Information with conspiracy to acquire
11 controlled substances by fraud, deception and subterfuge, and
12 specifically it's alleged that beginning on an unknown date
13 and continuing up to and including March 12, 2015, in this
14 District, the two of you intentionally conspired with each
15 other and with others to acquire and obtain possession of
16 controlled substances by misrepresentation, fraud, forgery,
17 deception and subterfuge. Specifically, the narcotics
18 acquired were oxycodone, zolpidem tartrate and alprazolam,
19 and excuse my pronunciation.

20 Does anyone at that table have a cell phone that is
21 interfering with our -- okay.

22 Okay. Addressing counsel, you both have retained
23 counsel, so counsel has been addressed. And let's address
24 the issue of bail.

25 Is there a joint recommendation as to bail, or will

1 we hold a bail hearing?

2 MR. GUTIERREZ: Yes, your Honor. We have a joint
3 recommendation of \$25,000 as to each secured by their own
4 signature. Pretrial Services have for Ms. Shireen Cole an
5 own-recognizance recommendation, and we have no objection to
6 that if the Court wants to do own-recognizance for Ms.
7 Shireen Cole. But we do have a joint recommendation for Dr.
8 Cole at \$25,000 secured by his signature.

9 MR. KHOURI: And that is correct, your Honor.
10 We've submitted the bond paperwork to your clerk.

11 THE COURT: As to both?

12 MR. KHOURI: Mike Khouri on behalf of Dr. Cole. As
13 to Dr. Cole, and we believe the bond paperwork has been
14 submitted as to Mrs. Cole, as well.

15 MR. NASATIR: That's correct. That is correct,
16 your Honor, but that was before I read the recommendation of
17 the Pretrial Services Officer.

18 THE COURT: Okay. So you're going to prepare --
19 assuming that I do not have a financial component, you need
20 to prepare different paperwork, is that what you're saying?

21 MR. NASATIR: Well --

22 MR. GUTIERREZ: Your Honor, if I could -- since
23 these counsel are both from the Los Angeles area, if we could
24 have a week for them to prepare and perfect. I do have the
25 documents that they provided for the originally intended

1 bond, but there are some -- we're missing a photograph of
2 identification, which we can get.

3 THE COURT: All right.

4 MR. KHOURI: And I'm from Orange County, and I
5 object to being referred to as being from Los Angeles, but --

6 THE COURT: Where will the Coles be residing while
7 out on bail?

8 MR. KHOURI: Doctor Cole will be residing at the
9 time at a drug rehabilitation center in Los Angeles County
10 called Promises, which was fully disclosed and discussed with
11 the Pretrial Services Officer, and I also have a letter from
12 the medical director, if the Court would like to look at it.
13 It's a program that's specifically tailored to professionals
14 with addiction issues. It is very highly regarded. We
15 actually went to a couple of the major medical centers in
16 Orange County, Hope and Saint Joseph's, and they recommended
17 that Doctor Cole be in a program oriented towards
18 professionals and recommended the Promises program.

19 When he is released from that program, which we
20 anticipate will occur in about 60 days, he will be living at
21 his mother's residence in Orange County, California. His
22 mother is here to verify that. His uncle is here, and also
23 his -- he was brought to court today by a -- what is called a
24 sober companion that, if he is released today, will be
25 responsible for taking him back to the Promises program in

1 Santa Monica.

2 THE COURT: Okay. And is the -- is participation
3 in this residential program a condition of release?

4 MR. GUTIERREZ: No, your Honor. He actually did it
5 voluntarily, and we have no objection to him residing there
6 during the term of his pretrial release.

7 THE COURT: Okay. And does Ms. Cole have any drug
8 addiction issues which need to be addressed?

9 MR. NASATIR: She does, but she is sober at the
10 present time. She attends regular Alcoholics Anonymous
11 meetings, and she is seeing an outpatient counselor.

12 THE COURT: Okay. All right. I will -- I will set
13 conditions of release in each of these cases.

14 As to Matthew Cole, your travel will be restricted
15 to the Southern and Central Districts of California. You're
16 to submit to drug and alcohol testing and treatment at the
17 direction of your Pretrial Services Officer up to eight times
18 per month, and you're to execute a personal appearance bond
19 in the amount of \$25,000 secured by your own signature. You
20 may remain out of custody while the bail bond paperwork is
21 being prepared, no later than December 22nd.

22 MR. KHOURI: I think we submitted that already.

23 THE COURT: I don't have a bond package.

24 MR. GUTIERREZ: Your Honor, I'm still waiting --

25 THE COURT: It's with the U.S. Attorney's Office.

1 MR. KHOURI: Oh, I see. Thank you, your Honor.

2 MR. GUTIERREZ: Once I receive all the documents,
3 your Honor, I will facilitate the delivery of them to
4 chambers rather than to counsel, which normally does it.
5 I'll be happy to do that.

6 THE COURT: As to Ms. Cole, your travel will be
7 restricted to the Southern and Central Districts of
8 California. You're to submit to drug and alcohol treatment
9 and testing at the discretion of the Pretrial Services Office
10 up to eight times per month, and you, too, may remain out of
11 custody while your paperwork is being prepared until no later
12 than December 22nd.

13 MR. NASATIR: Your Honor, may I be heard as to the
14 residential component you just announced.

15 THE COURT: I didn't announce a residential
16 component. All I said was that she subject --

17 MR. NASATIR: Travel -- travel component.

18 THE COURT: Oh. I'm sorry. Yes.

19 MR. NASATIR: She has parents in Florida, and I
20 would ask that she be allowed to travel to and from Florida
21 as well as the Central and Southern Districts.

22 THE COURT: She's not going to live there?

23 MR. NASATIR: No.

24 THE COURT: Okay. Then she can only travel to
25 Florida with advance permission from Pretrial Services.

1 MR. NASATIR: Thank you, your Honor.

2 MR. KHOURI: And, your Honor, I'm sorry, but as to
3 Doctor Khouri, did you order that he surrender his passport,
4 or no?

5 THE COURT: I did not, but I could.

6 MR. GUTIERREZ: We don't feel there's a need for
7 that, your Honor, but, of course, if the Court would like, we
8 have no objection, but we don't feel there's a need.

9 MR. KHOURI: And there doesn't appear to be a need
10 for that, then, if the Government isn't asking. Thank you,
11 your Honor.

12 PRETRIAL SERVICES: Your Honor -- I'm sorry. I'm
13 from Pretrial Services. In regards to Mr. Matthew Cole, it
14 appears that he does have some firearms that are registered
15 to him, so we would -- we are recommending that he legally
16 transfer those firearms.

17 THE COURT: Okay. I didn't see that I had reports
18 on those, so I didn't look to see what conditions you were
19 interested in.

20 PRETRIAL SERVICES: They're both in there, your
21 Honor.

22 THE COURT: Let me quick look. Okay. So it's also
23 recommended that as to Mark Cole, that he also submit to
24 mental health counseling and treatment. Is there any
25 objection that?

1 MR. KHOURI: No, your Honor. He's receiving that
2 now.

3 THE COURT: I'll add that to the conditions.

4 MR. GUTIERREZ: Your Honor, if I may. I think you
5 said Mark Cole. That would be Matthew Cole, the defendant?

6 THE COURT: Yes, Matthew. Thank you.

7 All right. And you'll be ordered to legally
8 transfer any firearm in your custody and control.

9 MR. KHOURI: And I think there are none.

10 MR. GUTIERREZ: Your Honor, just for the sake of
11 background, Mr. Cole's previous counsel indicated he dealt
12 with that. I was under the impression that was previously
13 transferred, but, to the extent it isn't, we'd ask for the
14 order, but I believe it has been transferred.

15 THE COURT: I'm including that order. Would you
16 please get together and share that information with the AUSA
17 so that if there's any issue with it, it can be brought to my
18 attention or the attention of Pretrial Services?

19 MR. KHOURI: Of course, your Honor.

20 THE COURT: Thank you.

21 As to Ms. Cole, there was also a recommendation for
22 mental health treatment. Is there any objection to that
23 condition being imposed?

24 MR. NASATIR: No, it's ongoing, your Honor. We
25 have no objection.

1 THE COURT: Okay. And I will impose that
2 condition. And then, Ms. Cole, you are to reside at a
3 residence approved by Pretrial Services.

4 MR. GUTIERREZ: Your Honor?

5 THE COURT: Yes.

6 MR. GUTIERREZ: The Court has nicely agreed to take
7 a guilty plea today. I just wanted to remind the Court --
8 inform the Court that it's going to be a request that she be
9 -- have a -- for a two-year period, or as long as she stays
10 on pretrial at least for two years without any violations,
11 that we will dismiss charges against her. So these terms
12 that you're setting now, I just want to inform the Court that
13 technically those would be for the next two years. Our
14 recommendation will officially be unsupervised pretrial
15 release, but the Court of course has discretion to do
16 whatever the Court would like with regard to the two-year
17 period. I just wanted to give the Court a preview that's
18 what our intended negotiations entail.

19 THE COURT: Thank you. Okay. Those are the
20 conditions.

21 Next --

22 PRETRIAL SERVICES: So, your Honor, just for
23 clarification, there is pretrial supervision on both?

24 THE COURT: There is.

25 PRETRIAL SERVICES: Okay. Thank you.

1 THE COURT: Okay. Next, Mr. Khouri and Mr.
2 Nasatir, have you each advised your clients of their right to
3 have these charges presented to a Grand Jury?

4 MR. KHOURI: Yes, your Honor.

5 MR. NASATIR: Yes, your Honor.

6 THE COURT: And did you explain the significance of
7 the waiver of indictment?

8 MR. KHOURI: Yes, I did, your Honor.

9 MR. NASATIR: Yes, your Honor.

10 THE COURT: Doctor Cole, do you have any questions
11 about your waiver of indictment?

12 MR. COLE: No, your Honor.

13 THE COURT: Ms. Cole, do you have any questions
14 about your waiver of indictment?

15 MS. COLE: No, your Honor.

16 THE COURT: Okay. I will accept them as knowingly
17 and voluntarily made.

18 Now, as we proceed into the change of plea, I'm
19 going to ask you a lot of questions, so I'm not going to need
20 you to stand up when you respond or you will be up and down
21 like a jack-in-the-box the whole time, so you can respond
22 from the seated position. I will not take offense.

23 All right. Doctor and Ms. Cole, I am a Magistrate
24 Judge. You have a right to have your guilty plea taken by a
25 District Judge, but I had a consent form from each of you

1 indicating that you wish to plead guilty today before me, a
2 Magistrate Judge.

3 Is that what you want to do, Doctor Cole?

4 MR. COLE: Yes, your Honor.

5 THE COURT: Mrs. Cole?

6 MS. COLE: Yes, your Honor.

7 THE COURT: Okay. Doctor Cole, how far did you go
8 in school?

9 MR. COLE: I received a medical - M.D. from the
10 University of Virginia.

11 THE COURT: Okay. And your education was in
12 English?

13 MR. COLE: Yes, it was.

14 THE COURT: And you read English fluently?

15 MR. COLE: Yes.

16 THE COURT: And how old are you, sir?

17 MR. COLE: I'm 37.

18 THE COURT: Ms. Cole, how old are you?

19 MS. COLE: Thirty-seven.

20 THE COURT: How far did you go in school?

21 MS. COLE: I got my Master's degree in clinical
22 psychology.

23 THE COURT: And your education was all in English?

24 MS. COLE: Yes.

25 THE COURT: And you read English fluently?

1 MS. COLE: Yes, your Honor.

2 THE COURT: Has either of you taken any drugs,
3 alcohol or medication in the last 48 hours that could affect
4 your ability to understand what we're doing today? Mr. Cole?

5 MR. COLE: No, your Honor.

6 THE COURT: Ms. Cole?

7 MS. COLE: No, your Honor.

8 THE COURT: Okay. You've each been placed under
9 oath and sworn to tell the truth. That means that you are
10 required to give truthful answers. If you lie, those answers
11 can be used against you in a later prosecution for perjury.

12 I want to advise you of your Constitutional rights.
13 You have the right to persist in your plea of not guilty.
14 You have the right to a speedy and public trial. You have
15 the right to be tried by a jury or, with the Government's
16 consent, you could agree to be tried by a judge. You have
17 the right to the assistance of counsel throughout all
18 proceedings including trial. If you can't afford to hire an
19 attorney, you have the right to have one appointed to
20 represent you at no cost to you. You have the right to
21 confront and cross-examine the witnesses against you. You
22 have the right to testify, to present a defense, and to
23 compel witnesses to testify on your behalf. You have the
24 right to remain silent, which means you cannot be forced to
25 testify at a hearing or trial, and the Government cannot

1 comment on your silence. However, by pleading guilty, you
2 will be giving up all of these rights with the exception of
3 your right to the continued assistance of counsel.

4 So you understand all of that, Doctor Cole?

5 MR. COLE: Yes, your Honor.

6 THE COURT: Ms. Cole?

7 MS. COLE: Yes, your Honor.

8 THE COURT: The United States is required to prove
9 every element of this crime beyond a reasonable doubt.
10 However, by pleading guilty, you'll be admitting each element
11 and relieving the United States of its obligation to prove
12 those elements. Specifically, you are charged with
13 conspiracy to acquire controlled substances by fraud,
14 deception and subterfuge. The elements of this offense are
15 as follows.

16 MR. GUTIERREZ: Your Honor, beginning on a date
17 unknown and ending on or about March 12, 2015, there was an
18 agreement between two or more persons to acquire or obtain a
19 controlled substance by misrepresentation, fraud, forgery,
20 deception or subterfuge, and the defendant joined the
21 agreement knowing of its purpose and intending to help
22 accomplish that purpose.

23 (Pause.)

24 THE COURT: Thank you.

25 Do you understand that those are the elements of

1 this offense, Doctor Cole?

2 MR. COLE: Yes, your Honor.

3 THE COURT: Ms. Cole?

4 MS. COLE: Yes, your Honor.

5 THE COURT: And do you understand that by pleading
6 guilty you will be admitting those elements, Doctor Cole?

7 MR. COLE: Yes, your Honor.

8 THE COURT: Ms. Cole?

9 MS. COLE: Yes, your Honor.

10 THE COURT: These are the maximum penalties that
11 you face as a result of your guilty plea.

12 MR. GUTIERREZ: Your Honor, a maximum of four years
13 in prison, as this is a Class D felony, and maximum \$250,000
14 fine, a mandatory special assessment of \$100 per count, and a
15 term of supervised release of not more than three years.

16 THE COURT: Do you understand those are the maximum
17 penalties that you face as a result of your guilty plea,
18 Doctor Cole?

19 MR. COLE: Yes, your Honor.

20 THE COURT: Ms. Cole?

21 MS. COLE: Yes, your Honor.

22 THE COURT: The sentencing judge may place you on
23 supervised released to begin following any release from
24 custody. If you violate the terms of your supervised
25 release, and depending on the seriousness of the violation,

1 you could be returned to prison for the whole amount of the
2 supervised released term. You would not receive credit for
3 any time you'd already served, and a new term of supervised
4 release could be imposed. If you were to violate the terms
5 of the new supervised release, this pattern could happen
6 repeatedly. Has each of you discussed the Federal Sentencing
7 Guidelines with your attorney? Doctor Cole?

8 MR. COLE: Yes, your Honor.

9 THE COURT: Ms. Cole?

10 MS. COLE: Yes, your Honor.

11 THE COURT: The Sentencing Guidelines are advisory
12 only. The sentencing judge does not have to follow them.
13 The sentencing judge will calculate the applicable Sentencing
14 Guideline range in your case at the time of sentencing and
15 will consider that range, possible departures and other
16 sentencing factors as required by law at your sentencing
17 hearing. The sentencing judge may impose a sentence up to
18 the maximum allowed by law. Do you have any questions about
19 the Sentencing Guidelines, Doctor Cole?

20 MR. COLE: No, your Honor.

21 THE COURT: Ms. Cole?

22 MS. COLE: No, your Honor.

23 THE COURT: Once you're sentenced, you will not
24 have the right to withdraw the guilty plea you are making
25 today even if the sentence you impose (sic) is more severe

1 than you anticipated. Do you understand that, Doctor Cole?

2 MR. COLE: Yes, your Honor.

3 THE COURT: Ms. Cole?

4 MS. COLE: Yes, your Honor.

5 THE COURT: You have the right to appeal any
6 sentence imposed unless you've given up that right as part of
7 your agreement with the Government. Now, I have a written
8 plea agreement in each of your cases. Have you reviewed the
9 entire plea agreement with your attorney, Doctor Cole?

10 MR. COLE: Yes, your Honor.

11 THE COURT: Ms. Cole?

12 MS. COLE: Yes, your Honor.

13 THE COURT: Among other things, your plea
14 agreements provide that if you're sentenced in accordance
15 with this plea agreement, you will be giving up or waiving
16 any right you have to appeal or collaterally attack your
17 conviction and sentence. Do you understand that, Doctor
18 Cole?

19 MR. COLE: Yes, your Honor.

20 THE COURT: Ms. Cole?

21 MS. COLE: Yes, your Honor.

22 THE COURT: Now, each of you have -- appear to have
23 signed and initialed your plea agreements. Did you each sign
24 and initial your plea agreements? Doctor Cole?

25 MR. COLE: Yes, your Honor.

1 THE COURT: Ms. Cole?

2 MS. COLE: Yes, your Honor.

3 THE COURT: Before doing so, did you read the
4 entire agreement, Doctor Cole?

5 MR. COLE: Yes, your Honor.

6 THE COURT: Ms. Cole?

7 MS. COLE: Yes, your Honor.

8 THE COURT: Do you have any questions about your
9 plea agreement?

10 MR. COLE: No, your Honor.

11 THE COURT: Doctor Cole?

12 MS. COLE: No, your Honor.

13 THE COURT: Okay. Doctor Cole?

14 MR. COLE: No.

15 THE COURT: Ms. Cole?

16 MS. COLE: No.

17 THE COURT: Are you satisfied with the services
18 you've received from your attorney, Doctor Cole?

19 MR. COLE: Yes, your Honor.

20 THE COURT: Ms. Cole?

21 MS. COLE: Yes, your Honor.

22 THE COURT: Your written plea agreement contains
23 certain promises. Have any other promises been made to you
24 to get you to plead guilty other than what's contained in
25 your written plea agreement, Doctor Cole?

1 MR. COLE: No, your Honor.

2 THE COURT: Ms. Cole?

3 MS. COLE: No, your Honor.

4 THE COURT: Has anyone threatened you or anyone you
5 care about or done anything to force you to plead guilty,
6 Doctor Cole?

7 MR. COLE: No, your Honor.

8 THE COURT: Ms. Cole?

9 MS. COLE: No, your Honor.

10 THE COURT: Okay. Before I can accept your guilty
11 plea, I have to make sure there's a factual basis for the
12 plea, and I will remind you that you're under oath.

13 First, addressing Doctor Cole, do you have a copy
14 of your plea agreement before you?

15 MR. COLE: Yes, your Honor.

16 THE COURT: Okay. I'm going to direct your
17 attention to the factual basis of the plea, which begins at
18 page 3, lines 22 and continues through line 8 of page 8.
19 Reviewing that factual basis, Doctor Cole, did you previously
20 read this entire factual basis carefully?

21 MR. COLE: Yes, your Honor.

22 THE COURT: And are you prepared to swear to me
23 that every fact -- every allegation set forth in that entire
24 factual basis is true and correct in every respect?

25 MR. COLE: Yes, your Honor.

1 THE COURT: Mr. Gutierrez, are you satisfied with
2 the factual basis, or would you like to make further inquiry?

3 MR. GUTIERREZ: No, your Honor, we're satisfied.
4 Thank you.

5 THE COURT: Okay. Ms. Cole, do you have a copy of
6 your plea agreement before you?

7 MS. COLE: Yes, your Honor.

8 THE COURT: Okay. I want to direct your attention
9 to the factual basis portion, which begins at the top of page
10 4 and proceeds through line 20 of page 8. Did you previously
11 have an opportunity to carefully read everything in the
12 factual basis?

13 MS. COLE: Yes, your Honor.

14 THE COURT: Okay. And -- and is everything that is
15 alleged set forth in those pages -- every fact set forth in
16 those pages true and correct in every respect?

17 MS. COLE: Yes, your Honor.

18 THE COURT: And do you today adopt that factual
19 basis as the basis for your guilty plea?

20 MS. COLE: Yes, your Honor.

21 THE COURT: Mr. Gutierrez, are you satisfied with
22 the factual basis?

23 MR. GUTIERREZ: Yes, your Honor. Thank you.

24 THE COURT: Okay. Counsel, is this pleading made
25 knowingly and voluntarily and with your concurrence, Mr.

1 Khouri?

2 MR. KHOURI: Yes, your Honor, it is.

3 MR. NASATIR: Yes, your Honor.

4 THE COURT: Understanding the charge against you,
5 your Constitutional rights and the maximum penalties that
6 you're facing and all other consequences of your guilty plea,
7 do you still want to plead guilty today, Doctor Cole?

8 MR. COLE: Yes, your Honor.

9 THE COURT: Ms. Cole?

10 MS. COLE: Yes, your Honor.

11 THE COURT: And how do you now plead to the one-
12 count Information charging you with conspiracy to acquire
13 controlled substances by fraud, deception and subterfuge,
14 guilty or not guilty, Doctor Cole?

15 MR. COLE: Guilty.

16 THE COURT: Ms. Cole?

17 MS. COLE: Guilty.

18 THE COURT: I find that each of these guilty pleas
19 is made knowingly and voluntarily with a full understanding
20 of the nature of the charge, the defendants' Constitutional
21 rights and all the consequences of the defendants' guilty
22 pleas. I also find that there's a factual basis for each
23 plea. I will recommend that the District Judge accept each
24 of these guilty pleas.

25 Is -- are both of these deferred entry of judgment

1 or just as to --

2 MR. GUTIERREZ: Just as to Ms. Shireen Cole, your
3 Honor.

4 THE COURT: I'm going to be doing the sentencing on
5 those.

6 Okay. As to Doctor Cole, I will order that a
7 presentence report be prepared. I'm getting a sentencing
8 date.

9 Thank you. I will set a sentencing date of March
10 21st, 2016 at 9:00 o'clock a.m. before Judge Huff. I will
11 exclude time between now and the sentencing date for Judge
12 Huff to consider the proper guilty plea and the written plea
13 agreement. And, as to Ms. Cole, I will set this matter for a
14 status before me on December 15th, 2016, at 9:00 o'clock
15 a.m., and I will exclude time under the Speedy Trial Act
16 between now and the sentencing date for the District Court to
17 evaluate the written plea agreement in the event that
18 sentencing is required and also to effectuate the intention
19 of the parties with respect to the deferred entry of
20 prosecution.

21 Is there anything further we can address at this
22 time? Has he --

23 MR. NASATIR: That was December 16?

24 THE COURT: December 16th, 2016 -- I'm sorry. This
25 should be two years out, right?

1 MR. GUTIERREZ: Yes, your Honor.

2 THE COURT: We need a date of 2017.

3 PRETRIAL SERVICES: Your Honor, while we do that, I
4 just wanted to clarify Ms. Shireen's bail. Was that O.R.?

5 THE COURT: Yes, there's no -- there's no financial
6 component to report. That's correct.

7 PRETRIAL SERVICES: And then regarding Mr. Matthew
8 Cole, I wrote down that he was to reside at a residence
9 approved by Pretrial Services. Would that include Promises?
10 I didn't see that on the conditions of release form, so I
11 wanted to clarify as far as his residence. He's actually
12 participating in a residential program right now. Is that a
13 Court order for him to complete that program?

14 THE COURT: I did not include it in the Court order
15 before it was not -- because the Assistant U.S. Attorney
16 asked that I not include it as a condition.

17 PRETRIAL SERVICES: Okay.

18 THE COURT: Would you like me to include it as a
19 condition?

20 PRETRIAL SERVICES: Yes, your Honor, it's a
21 condition, and then also we would request that he commence
22 his drug testing once he completes the program.

23 THE COURT: I'm happy to put that, but I don't
24 think I need to limit at that because it's at your discretion
25 anyway.

1 PRETRIAL SERVICES: Okay. Okay.

2 THE COURT: So that's at the discretion of Pretrial
3 Services, but I do -- I do understand why you want to include
4 a condition, and, frankly, it seems appropriate to include a
5 condition to -- that he complete the program he's in.

6 Is there any objection to that?

7 MR. KHOURI: No, your Honor. We discussed that
8 with the Pretrial Services Officer during the interview
9 earlier today.

10 THE COURT: Okay. So I'm going to make it a
11 condition that he successfully complete his drug treatment
12 program.

13 MR. KHOURI: What we would ask the Court to
14 consider --

15 THE COURT: Yes?

16 MR. KHOURI: -- because we don't want there to be
17 any confusion on this, is that he voluntarily checked himself
18 into that program as being the best program that he could
19 select, and it was recommended by the major medical centers
20 in Orange County. That is the program that we believe he
21 should be in. That is the program that I believe the Court
22 should require him to be in and complete as opposed to any
23 other program.

24 THE COURT: Okay.

25 MR. KHOURI: And we presented quite a --

1 THE COURT: No, no, that's fine.

2 MR. KHOURI: All right.

3 THE COURT: I'll -- it'll be successfully complete
4 a drug program at Promises.

5 MR. KHOURI: Thank you very much, your Honor.

6 THE COURT: Okay.

7 PRETRIAL SERVICES: Thank you, your Honor.

8 THE COURT: Okay. We're jumping around a bit.

9 Ms. Cole, you are ordered to appear before me next
10 on December 14th, 2017, at 9:00 o'clock a.m.

11 As to Ms. Cole, I think it's important that her
12 supervised release be supervised, at least initially.

13 However, I would be amenable to, counsel, to you coming
14 forward after Ms. Cole has demonstrated her goal sobriety --
15 to come forward at an appropriate time to recommend that the
16 -- that she be converted to unsupervised pretrial release.

17 MR. NASATIR: Thank you very much, your Honor.
18 We'll do that.

19 THE COURT: And please remind me that I said that.

20 MR. NASATIR: I will.

21 THE COURT: Okay. Now, the two of you need to
22 report to the United States Marshals Service for
23 fingerprinting and photographing.

24 MR. NASATIR: Your Honor?

25 THE COURT: Yes.

1 MR. NASATIR: May I be heard on that matter?

2 THE COURT: Yes.

3 MR. NASATIR: The DEA agent was there -- well, I
4 can represent to the Court that he has agreed to fingerprint
5 and photograph her and book her from his office -- at his
6 office.

7 THE COURT: I'm not familiar with that --

8 MR. NASATIR: No?

9 THE COURT: -- process.

10 MR. NASATIR: Okay.

11 THE COURT: I can ask the deputy who's in the
12 courtroom, but I think it has to be the Marshals that do
13 that.

14 THE DEPUTY: Yes, Judge.

15 THE COURT: Okay. It has to be through the U.S.
16 Marshals. He may have his own separate system, but it's got
17 to be the Marshal's Service that processes the --

18 MR. NASATIR: Will that be today?

19 THE COURT: That will be today. Is it too late for
20 them to go to the Marshals for processing today

21 THE DEPUTY: No, it's not.

22 THE COURT: Okay. So please go directly after
23 court right now and go to the Marshals.

24 MR. GUTIERREZ: Your Honor, I'm not familiar where
25 that is. Just, since they're from out of town, is that

1 downstairs in the basement of the annex of the new
2 courthouse?

3 MR. KHOURI: Plaza level, the new courthouse. I
4 came prepared. The nuns taught me well.

5 THE COURT: Happy -- best wishes to both of you in
6 terms of your success -- continued success, and I hope you
7 have no more trouble.

8 MR. KHOURI: Thank you very much, your Honor.

9 MR. NASATIR: Thank you very much, your Honor.

10 MR. GUTIERREZ: Your Honor, thank you for taking
11 this rather long matter on short notice.

12 PRETRIAL SERVICES: And, your Honor, we want to
13 request that both defendants report to our office once
14 they're done with the --

15 THE COURT: Oh, yes. And from the U.S. Marshals to
16 Pretrial Services, please.

17 (Proceedings concluded.)

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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/Lisa A. Punzo 4/11/17
6 Transcriber Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8 /s/L.L. Francisco
9 L.L. Francisco, President
Echo Reporting, Inc.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
v.
MATTHEW COLE (1),
Defendant.

Criminal Case No. 15CR3074-H
ORDER ACCEPTING PLEA

No objections having been filed, **IT IS ORDERED** that the Findings and Recommendation of the Magistrate Judge are adopted and this Court accepts Defendant's PLEA OF GUILTY to Count 1 of the Information.

DATED: December 30, 2015


MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT



JENNIFER KENT
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

MAY 18 2016

Matthew Cole
366 San Miguel Drive, Suite 210
Newport Beach, CA 92660

Re: Physician
License No. A98152
Provider No.: 1942487343

Dear Dr. Cole:

The Director of the State Department of Health Care Services (Department) has been notified of your April 19, 2015, conviction in the United States District Court (*U.S. v. Matthew Cole*, No. 15-cr-3074-H) for violation of 21 United States Code sections 843(a)(3), 843(d)(1) and 846. This is a conviction involving fraud and that has been determined by the Department to be substantially related to the qualifications, functions, or duties of a provider of service. As a provider of health care services, you were granted certain permissions to participate in the Medi-Cal program by operation of law with or without applying for enrollment. Pursuant to Welfare and Institutions Code section 14123, subdivision (a), the Director is required to automatically suspend these permissions in certain cases, which means that the affected individual or entity is precluded from being eligible to receive payment from the Medi-Cal program directly or indirectly. This requirement applies to anyone who provides health services whenever that person is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. (See 42 C.F.R. § 1001.101(c) & 1001.101(d); Welf. & Inst. Code, § 14123.25.)

Therefore, on behalf of the Director of the Department, you are hereby notified that you are prohibited from being able to receive payment from the Medi-Cal program for an indefinite period of time, effective twenty days (15 days' statutory notice, plus 5 days for mailing) from the date of this letter. Your name will be posted on the "Medi-Cal Suspended and Ineligible Provider List," available on the Internet. During the period of your suspension, no person or entity, including an employer, can submit any claims to the Medi-Cal program for items or services rendered by you. If you are currently enrolled in Medi-Cal, that enrollment will be terminated. Any involvement by you directly or indirectly (i.e., as an office manager, administrator, billing clerk processing or preparing claims for payment, salesperson for medical equipment, etc., or utilizing any

MAY 18 2016

other provider number or group or clinic number for services rendered by you) will result in nonpayment of the claim(s) submitted. Any person who presents or causes to be presented a claim for equipment or services rendered by a person suspended from receiving Medi-Cal payment shall be subject to suspension from receiving payment, the assessment of civil money penalties, and/or criminal prosecution. (See Welf. & Inst. Code, §§ 14043.61, 14107, 14123.2; Cal. Code of Regs., tit. 22, §§ 51458.1, 51484, and 51485.1.) The Department will seek recoupment of any monies paid for claims presented to the Medi-Cal program for services or supplies rendered by you during the period of your suspension.

If you have any questions about this action, please submit your concerns, in writing, to the Office of Legal Services, Mandatory Suspension Desk, at the address above.

Sincerely,



Sara M. Granda
Attorney

cc: See Next Page