

**State of New Hampshire
Speech-Language Pathology Governing Board
Concord, New Hampshire 03301**

In the Matter of
John F. McGarry, SLP
No.: 0944
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of speech-language pathology, the New Hampshire Speech-Language Pathology Governing Board ("Board") and John F. McGarry, SLP ("Mr. McGarry" or "Respondent"), a speech-language pathologist licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 328-F:23 and 328-F:24 and the New Hampshire Code of Administrative Rules for Speech-Language Pathology ("Spe") 103.03, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by licensees. Pursuant to RSA 328-F:24 and Spe 213, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice speech-language pathology in the State of New Hampshire on June 3, 2003. Respondent holds license number 0944. Respondent most recently practiced at the Litchfield (NH) School District.
3. On or about May 15, 2009, the Board received information that Respondent had been arrested for possession of child pornography.

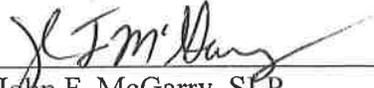
4. In response to this, the Board requested that the APU conduct an investigation. That investigation revealed and Respondent freely admits to the following facts:
 - A. On May 14, 2009, Respondent was arrested by federal agents and charged with possession of child pornography.
 - B. On May 26, 2009, Respondent entered into a Preliminary Agreement for Practice Restrictions whereby he agreed not to practice as a speech-language pathologist pending the resolution of the federal criminal charges against him.
 - C. On January 13, 2010, Respondent entered into a plea agreement whereby he agreed to waive indictment and plead guilty to Transportation of Child Pornography in violation of 18 U.S.C. §2252 (a) (1). (See Plea Agreement attached hereto as Attachment 1.)
5. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 328-F:23, II (b) and Spe 404.01.
6. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a speech-language pathologist in the State of New Hampshire.
7. Respondent consents to the Board imposing the following discipline, pursuant to RSA 328-F:23, IV:
 - A. Respondent's New Hampshire license to practice as a speech-language pathologist is **REVOKED**.

- B. Respondent may reapply for licensure five (5) years after the date of issuance of this Settlement Agreement, provided that he has complied with all the terms and conditions of his criminal conviction.
8. Respondent's breach of any terms or conditions of this Settlement Agreement shall constitute unprofessional conduct pursuant to RSA 328-F:23, and a separate and sufficient basis for further disciplinary action by the Board.
9. Except as provided herein, this Settlement Agreement shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
10. This Settlement Agreement shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
11. Respondent voluntarily enters into and signs this Settlement Agreement and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
12. The Board agrees that in return for Respondent executing this agreement, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.

13. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
14. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
15. Respondent understands that the Board must review and accept the terms of this agreement. If the Board rejects any portion, the entire agreement shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this agreement have prejudiced his right to a fair and impartial hearing in the future if this agreement is not accepted by the Board.
16. Respondent is not under the influence of any drugs or alcohol at the time he signs this agreement.
17. Respondent certifies that he has read this document titled Settlement Agreement. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this agreement, he waives these rights as they pertain to the misconduct described herein.
18. This agreement shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

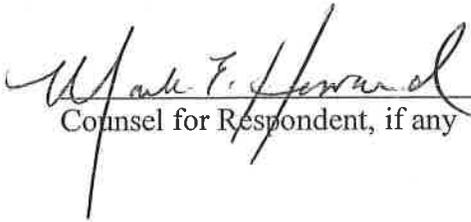
FOR RESPONDENT

Date: 10/5/2010



John F. McGarry, SLP
Respondent

Date: 12/30/10



Counsel for Respondent, if any

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 1/6/11



(Signature)

(Print or Type Name)
Authorized Representative of the
Speech-Language Pathology Governing Board

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ATTACHMENT 1

UNITED STATES OF AMERICA)

v.)

JOHN MCGARRY)

Cr. No. 1:10-CR-3-01-SM

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States of America by its attorney, Michael J. Gunnison, Attorney for the United States Under Authority Conferred by 28 U.S.C. §515, and the defendant, John McGarry, and the defendant's attorney, Mark Howard, enter into the following Plea Agreement:

1. The Plea and The Offense.

The defendant agrees to waive indictment and plead guilty to the One Count Information charging the defendant with Transportation of Child Pornography in violation of 18 U.S.C. §2252 (a) (1).

2. The Statute and Elements of the Offense.

Title 18, United States Code, Section 2252(a)(1), provides in pertinent part:

Any person who knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails any visual depiction if -

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;
shall be punished as provided in subsection (b).

Elements of the Offense

The defendant understands that the offense to which he is pleading guilty has the following elements, each of which the government would have to prove beyond a reasonable doubt at trial:

First, the defendant knowingly transported a visual depiction in interstate commerce by any means, including a computer;

Second, that the production of such visual depiction involved the use of a minor engaged in sexually explicit conduct;

Third, that such visual depiction was of a minor engaged in sexually explicit conduct; and

Fourth; that the defendant knew that at least one of the performers in such visual depiction was a minor and knew that the visual depiction was of such minor engaged in sexually explicit conduct.

3. Penalties

The defendant understands that the crime to which he is pleading guilty carries the following possible penalties:

A. A minimum prison term of 5 years and a maximum prison term of 20 years (18 U.S.C. §2252(a)(1));

- B. a maximum fine of \$250,000 (see 18 U.S.C. § 3571);
- C. a mandatory special assessment of \$100.00, which the defendant agrees to pay at or before the time of sentencing; and
- D. A term of supervised release of any term of years or life (18 U.S.C. §3583(k)). Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison all or part of the term of supervised release, with no credit for time already spent on supervised release.

In addition to the other penalties provided by law, the Court may also order the defendant to pay restitution to the victim of the offense, pursuant to 18 U.S.C. § 3663 or § 3663A.

4. Sentencing and Application of the Sentencing Guidelines.

The defendant understands that the Sentencing Reform Act of 1984 applies in this case and that the Court is required to consider the United States Sentencing Guidelines as advisory guidelines. The defendant further understands that the defendant has no right to withdraw the defendant's guilty plea if the applicable advisory guideline range or the defendant's sentence is other than the defendant anticipated, except as expressly provided in this Plea Agreement.

The defendant also understands that the United States and the United States Probation Office shall:

- A. advise the Court of any additional, relevant facts that are presently known or may subsequently come to their attention;
- B. respond to questions from the Court;
- C. correct any inaccuracies in the pre-sentence report;
- D. respond to any statements made by the defendant or the defendant's counsel to a probation officer or to the Court.

The defendant understands that the United States and the Probation Office may address the Court with respect to an appropriate sentence to be imposed in this case.

The defendant is aware that any estimate of the probable sentence or the probable sentencing range relating to the defendant pursuant to the advisory Sentencing Guidelines that the defendant may have received from any source is only a prediction and not a promise, and is not binding on the United States, the Probation Office, or the Court, except as expressly provided in this Plea Agreement.

5. Stipulations and Other Agreements.

The Government and the defendant have reached the following stipulations pursuant to Fed. R. Crim. P. 11(c)(1)(C):

- A. The defendant is to be sentenced to a term of

imprisonment of no less than 5 years and no more than 10 years. The parties agree that the period of incarceration is to be followed by supervised release for a period of life.

This stipulation is intended by the parties to be "binding" under Fed. R. Crim. P. 11(c)(1)(C). By using the word "binding", the parties mean that if the Court cannot or will not accept these stipulations, either party will be permitted to withdraw from this Plea Agreement.

The United States and the defendant agree that neither the United States nor the defendant will seek a departure from the otherwise applicable advisory sentencing guideline range.

The defendant understands and agrees that the United States may argue that other sentencing enhancements should be applied in determining the advisory guideline range in this case, and that the defendant is permitted to object to those enhancements.

The United States and the defendant are free to make recommendations with respect to the terms of imprisonment, fines, conditions of probation or supervised release, and any other penalties, requirements, and conditions of sentencing as each party may deem lawful and appropriate unless such recommendations are inconsistent with the terms of this Plea Agreement.

6. Acceptance of Responsibility.

The United States agrees that it will not oppose an appropriate reduction in the defendant's adjusted offense level,

under the advisory Sentencing Guidelines, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for the offense. The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant:

- A. fails to admit a complete factual basis for the plea at the time the defendant is sentenced or at any other time;
- B. challenges the United States' offer of proof at any time after the plea is entered;
- C. denies involvement in the offense;
- D. gives conflicting statements about that involvement or is untruthful with the Court, the United States or the Probation Office;
- E. fails to give complete and accurate information about the defendant's financial status to the Probation Office;
- F. obstructs or attempts to obstruct justice, prior to sentencing;
- G. has engaged in conduct prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement;

- H. fails to appear in court as required;
- I. after signing this Plea Agreement, engages in additional criminal conduct; or
- J. attempts to withdraw the plea of guilty.

If the defendant's offense level is sixteen or greater, and the defendant has assisted the United States in the investigation or prosecution of the defendant's own misconduct by timely notifying the United States of the defendant's intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently, the United States will move, at or before sentencing, to decrease the defendant's base offense level by an additional one level pursuant to U.S.S.G. § 3E1.1(b).

The defendant understands and agrees that the defendant may not withdraw the defendant's guilty plea if, for any of the reasons listed above, the United States does not recommend that the defendant receive a reduction in the defendant's sentence for acceptance of responsibility.

The defendant also understands and agrees that the Court is under no obligation to reduce the offense level if it finds that the defendant has not accepted responsibility.

7. Substantial Assistance.

If the defendant provides substantial assistance in the

investigation or prosecution of another person who has committed an offense, the United States may file a motion pursuant to U.S.S.G. §5K1.1 and 18 U.S.C. §3553(e) advising the sentencing Court of all relevant facts pertaining to that determination and requesting the Court to sentence the defendant in light of the factors set forth in §5K1.1(a)(1)-(5).

The defendant understands that the determination of whether to file such a motion rests solely with the United States. This means that the United States may or may not file a motion under U.S.S.G. §5K1.1 or 18 U.S.C. §3553(e). The decision whether to file such a motion will depend on the United States' evaluation of any assistance provided by the defendant. The defendant also understands that even if such a motion is filed, the Court is under no obligation to grant or act favorably upon the motion. It is understood that the sentence to be imposed on the defendant remains within the discretion of the sentencing Court.

8. Use of Certain Information.

Provided the defendant gives truthful, accurate and complete information, the United States agrees that, pursuant to U.S.S.G. § 1B1.8(a), any self-incriminating information provided by the defendant which was not known by the United States, or which the United States could not establish by a preponderance of the evidence at the time of the defendant's briefings, shall not be used in determining the advisory guideline range. This Plea

Agreement is subject to the § 1B1.8(b) exceptions and reserves to the government the ability to make derivative use of the defendant's statements.

9. Waiver of Trial Rights and Consequences of Plea.

The defendant understands that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant. The defendant understands that the defendant has the right:

- A. to plead not guilty or to maintain that plea if it has already been made;
- B. to be tried by a jury and, at that trial, the right to the assistance of counsel;
- C. to confront and cross-examine witnesses against the defendant;
- D. not to be compelled to provide testimony that may incriminate the defendant; and
- E. to compulsory process for the attendance of witnesses to testify in the defendant's defense.

The defendant understands that by pleading guilty the defendant waives and gives up those rights and that if a plea of guilty is accepted by the Court, there will not be a trial of any kind.

The defendant understands that if the defendant pleads

guilty, the Court may ask the defendant questions about the offense, and if the defendant answers those questions falsely under oath, on the record, and in the presence of counsel, the defendant's answers may later be used against the defendant in a prosecution for perjury or making false statements.

10. Acknowledgment of Guilt; Voluntariness of Plea.

The defendant acknowledges that the defendant:

- A. is entering into this Plea Agreement and is pleading guilty freely and voluntarily because the defendant is guilty;
- B. is entering into this Plea Agreement without reliance upon any discussions with the United States and without promise of benefit of any kind except as described in this Plea Agreement;
- C. is entering into this Plea Agreement without threats, force, intimidation, or coercion of any kind;
- D. understands of the nature of the offense to which the defendant is pleading guilty, including the penalties provided by law; and
- E. is completely satisfied with the representation and advice received from the defendant's undersigned attorney.

11. Scope of Agreement.

The defendant acknowledges and understands that this Plea

Agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to the defendant with respect to any civil or administrative consequences that may result from the defendant's plea of guilty, because such matters are solely within the discretion of the specific administrative or government agency involved. Finally, the defendant acknowledges that this Plea Agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving the defendant.

12. Collateral Consequences.

The defendant understands that the defendant will be adjudicated guilty of the offense to which the defendant will plead guilty and may thereby be deprived of certain federal benefits and certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms.

13. Satisfaction of Federal Criminal Liability; Breach.

The defendant's guilty plea, if accepted by the Court, will satisfy any federal criminal liability of the defendant in the District of New Hampshire as a result of the defendant's participation in the conduct which forms the basis of the indictment in this case. The defendant understands that if, before sentencing, the defendant violates any term or condition of this Plea Agreement, engages in any criminal activity, or

fails to appear for sentencing, the United States may consider such conduct to be a breach of the Plea Agreement and may withdraw from it.

14. Waivers.

A. Appeal and Collateral Review.

The defendant is aware that the defendant has the right to challenge the defendant's sentence and guilty plea on direct appeal. The defendant is also aware that the defendant may, in some circumstances, be able to argue that the defendant's plea should be set aside, or the defendant's sentence be set aside or reduced, in a collateral challenge (such as pursuant to a motion under 28 U.S.C. § 2255 or § 2241).

By entering into this Plea Agreement, the defendant knowingly and voluntarily waives any right to appeal or to collaterally challenge:

1. The defendant's guilty plea and any other aspect of defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues;
2. The defendant's sentence imposed by the Court if within the guideline range determined by the Court, or lower, or the Court's imposition of the minimum mandatory sentence.

The defendant's waiver of rights to appeal and to bring

collateral challenges shall not apply to appeals or challenges based on new legal principles in First Circuit or Supreme Court cases decided after the date of this Plea Agreement which are held by the First Circuit or Supreme Court to have retroactive effect. The defendant's waiver of the right to collateral review does not extend to claims that the plea was unknowing or involuntary or to claims that the defendant received ineffective assistance of counsel in the negotiation of the plea or plea agreement.

This Plea Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b), and the United States therefore retains its appeal rights.

B. Freedom of Information and Privacy Acts.

The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §522a.

15. Restitution.

In addition to the other penalties provided by law, the Court may also order that the defendant make restitution under 18

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U.S.C. § 3663 to victims included in the count(s) to which ~~she~~^{he} agrees to plead guilty.

16. No Other Promises.

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement or revealed to the Court, and none will be entered into unless set forth in writing, signed by all parties, and submitted to the Court.

17. Final Binding Agreement.

None of the terms of this Plea Agreement shall be binding on the United States until this Plea Agreement is signed by the defendant and the defendant's attorney and until signed by the United States Attorney for the District of New Hampshire, or an Assistant United States Attorney.

18. Agreement Provisions Not Severable.

The United States and the defendant understand and agree that if any provision of this Plea Agreement is deemed invalid or unenforceable, then the entire Plea Agreement is null and void and no part of it may be enforced.

Michael J. Gunnison
Attorney for the United States
Acting Under Authority
Conferred by 28 U.S.C. §515

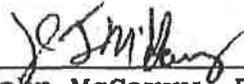
Date: 1/13/10

By: Helen White Fitzgibbon
Helen White Fitzgibbon
Assistant U.S. Attorney

Bar No. 6833
U.S. Attorney's Office
53 Pleasant St., 4th Floor
Concord, NH 03301
(603) 225-1552

The defendant, John McGarry, certifies that the defendant has read this 15-page Plea Agreement and that the defendant fully understands and accepts the terms thereof.

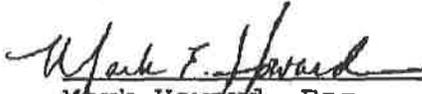
Date: January 13, 2010



John McGarry, Defendant

I have read and explained this 15-page Plea Agreement to the defendant, and he has advised me that he understands and accepts its terms.

Date: January 13, 2010



Mark Howard, Esq.
Attorney for John McGarry

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