

TSBPME Case Nos. 99-070; 01-102; 03-071

IN THE MATTER OF
KAREN E. TUCKER, D.P.M.

SUSPENSION of

LICENSE No. 1274

§
§
§
§
§

BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Karen E. Tucker, DPM. By letter dated February 15, 2002 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Tucker of its intent to investigate complaints, concerns or reports filed against her. Dr. Tucker was duly notified of the allegations against her. Dr. Tucker has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By her signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Tucker does hereby waive her right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Tucker understands that she has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Tucker, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Tucker agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the Findings of Fact and Conclusions of Law set out in this Order. The Board makes the following Findings of Fact and enters this Order:

FINDINGS OF FACT

1. Dr. Tucker is licensed as a podiatric physician in the State of Texas (License Number 1274) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the Rules of the Board.
2. Complaints were filed against Dr. Tucker, and she was provided with notice of the complaints and with an opportunity to respond to the complaints and to show compliance with the law.
3. Dr. Tucker, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board Rules and Board Orders.
4. On March 10, 1999, Dr. Tucker plead guilty to one count of federal health care

- fraud in the United States District Court for the Northern District of Texas (Dallas Division). The federal health care fraud was directly related to Dr. Tucker's practice and license to practice podiatric medicine in the State of Texas.
5. Dr. Tucker was convicted and sentenced to three years probation.
 6. Dr. Tucker was ordered to make restitution in the amount of \$26,402.07 to the United States Department of Health and Human Services.
 7. Dr. Tucker was ordered to participate in the home confinement program for a period of 120 consecutive days.
 8. On July 20, 1999, Dr. Tucker was "Excluded" from participation in Medicare, Medicaid and all other Federal Healthcare Programs for a period of ten years.
 9. On April 30, 2002, Dr. Tucker's appeal of the federal criminal conviction was denied and the conviction upheld by the United States Court of Appeals for the Fifth Circuit.
 10. On October 15, 2002, Dr. Tucker's petition for a writ of certiorari was denied by the Supreme Court of the United States. There are no further appeals of the federal criminal conviction; the conviction is final.

CONCLUSIONS OF LAW

1. Dr. Tucker is required to follow the provisions of the podiatric medical practice act, Texas Occupations Code, §202.001, et. seq., and the associated rules of the Board, 22 Tex. Administrative Code § 371.1, et. seq..
2. Texas Occupations Code, §53.021(a) provides that, "a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.
3. Texas Occupations Code, §202.253(a)(2)(A) provides that, "the board may refuse to issue a license to practice podiatry to a person, for being convicted of a felony."
4. Texas Occupations Code, §202.253(a)(2)(B) provides that, "the board may refuse to issue a license to practice podiatry to a person, for being convicted of a crime that involves moral turpitude."
5. Texas Occupations Code, §202.253(a)(4) provides that, "the board may refuse to issue a license to practice podiatry to a person, for engaging in grossly unprofessional or dishonorable conduct of a character that in the board's opinion is likely to deceive or defraud the public."
6. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
7. Texas Occupations Code, §202.253(a)(16) provides that, "the board may refuse to issue a license to practice podiatry to a person, for failing to practice podiatry in an acceptable manner consistent with public health and welfare."
8. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."

9. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
10. 22 Texas Administrative Code, §375.2(b) provides that, “a licensed podiatric physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing.”
11. 22 Texas Administrative Code, §376.1(a)(1) provides that, “any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine.”
12. The Findings Of Fact numbers 1 through 10 establish that Dr. Tucker violated: *Texas Occupations Code, §202.253(a)(16)* in that she failed: to practice podiatry in an acceptable manner consistent with public health and welfare. *22 Texas Administrative Code §375.2(a)* provides: “The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective of the podiatric medical profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.”

ORDER

1. Dr. Tucker’s license to practice podiatric medicine is hereby Suspended for a term of 5 years, commencing on the day after the Order is entered by the Board. The last 3 years (2006 to 2009) of the Suspension shall be probated, conditioned upon the successful completion of the provisions set forth below.

During the 2-year non-probated portion of the Suspension:

2. Dr. Tucker’s podiatric practice is to remain closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and Dr. Tucker may not participate for income in any professional activity that is directly related to the diagnosis or treatment of a patient. Dr. Tucker may refer her patients to another practitioner for treatment or consultation during the term of the non-probated suspension, but Dr. Tucker shall not derive any income from such referrals.
3. Dr. Tucker may keep her office open for the purposes of arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters if not directly related to the diagnosis and treatment of patients. Dr. Tucker shall not offer and shall not accept to consult with, diagnose or treat a patient.
4. If Dr. Tucker shares office space with a podiatrist, the other podiatrist shall be allowed to continue his/her practice normally, but Dr. Tucker shall not consult

regarding the diagnosis or treatment of patients and shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients.

Conditions precedent to probation of Suspension:

5. At the end of the first two years of the suspension, Dr. Tucker will present documentation to the Board indicating: a) That she has maintained an active podiatry license in good standing in another state within the United States during the first two years of suspension; b) A letter addressed to the Board and signed by the D.P.M. assigned by the New Jersey Board of Medical Examiners to supervise Dr. Tucker's practice. The letter must state that Dr. Tucker has practiced podiatry in a satisfactory manner.

Regarding the conditional 3-year probated portion of the Suspension:

6. Upon successful completion of all the conditions precedent set forth above, the remainder of the suspension will be probated, subject to the conditions below.
7. Dr Tucker shall permit a Board representative or staff member to periodically enter her place of business and/ or the facility at which she previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained, including applicable billing records.
8. Dr. Tucker shall pay a fine of \$5,000.00 (Five Thousand Dollars and no/100). The fine of \$5,000.00 (Five Thousand Dollars and no/100) is conditionally waived. Failure to maintain proper medical records, and applicable billing records, will result in the automatic assessment of the fine, which shall be immediately fully due and payable. In addition, Dr. Tucker's license to practice shall be automatically Suspended, without further action or notice required by the Board. Suspension shall be in effect until such date as the fine is paid.
9. Dr. Tucker shall complete an additional four (4) hours of Continuing Medical Education every year in addition to the hours already required by law. The four (4) hours shall consist of ethics or billing courses; offered by the Texas Podiatric Medical Association or the Texas Medical Association.
10. Dr. Tucker will attend the first Board meeting of each calendar year to briefly report about her progress during the (probated) Suspension, if she is actively practicing podiatric medicine in Texas during this timeframe. The Board staff shall inform Dr. Tucker of the meeting date upon her request prior to each meeting. If she is unable to attend a particular meeting as required, Dr. Tucker shall inform the Board staff prior to the meeting date.
11. Entry of this Order shall finally resolve any and all pending matters or investigations before the Board, including the investigation of federal healthcare

fraud by the United States Department of Health and Human Services – Office of Inspector General that are the subject of this Order.

12. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.
13. If Dr. Tucker fully complies with the terms of the **Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

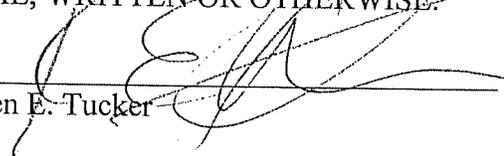
GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed to be in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act., Tex. Occup. Code Ann., §53.021* and the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Tucker acknowledges that she has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Tucker has executed this instrument freely and of her own accord.
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Karen E. Tucker, DPM
1 Erynwood Ave.
Marlton, New Jersey 08053-1814

Texas State Board of Podiatric Medical Examiners
P.O. Box 12216
Austin, TX 78711-2216
6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, KAREN E. TUCKER, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.


Karen E. Tucker _____ Date 10/3/03

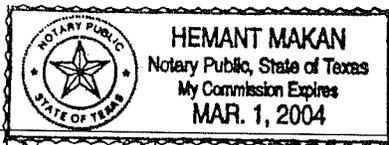
IN THE STATE OF TEXAS §

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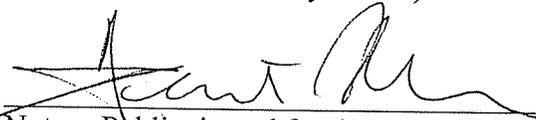
COUNTY OF TRAVIS §

BEFORE ME, on this day personally appeared Karen E. Tucker known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

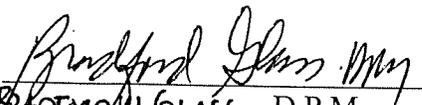
SIGNED on this the 3RD day of OCTOBER, 2003.

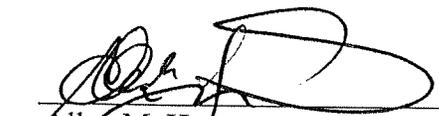


(Printed Name of Notary Public)


Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 13TH day of JANUARY, 2004, after a Board vote.


BRADFORD W. GLASS, D.P.M.
Board President


Allen M. Hymans
Executive Director

United States District Court
Northern District of Texas
Dallas Division

FILED
MAR 10 1999
NANCY DOHERTY, CLERK
BY Deputy

UNITED STATES OF AMERICA

v.

Case Number 3:97-CR-337-R (01)

KAREN E. TUCKER
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, KAREN E. TUCKER, was represented by F. Lee Bailey

On motion of the United States, the court has dismissed the original indictment filed October 8, 1997, superseding indictments filed March 19, 1998 and August 19, 1998, and remaining counts of the superseding indictment filed on November 18, 1998, as to this defendant.

The defendant pleaded guilty to count(s) 16 of the superseding indictment filed on 11/18/98. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18 USC § 1347	Healthcare Fraud	May 5, 1997	16

As pronounced on March 5, 1999, the defendant is sentenced as provided in pages 1 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100, for count(s) 16, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 10 day of March, 1999.

Jerry Buchmeyer

CHIEF JUDGE JERRY BUCHMEYER
UNITED STATES DISTRICT COURT

Defendant's SSN: 148-70-1901
Defendant's Date of Birth: 5/24/65
Defendant's Address: One Erynwood Avenue, Marlton, New Jersey 08053
Defendant's USM No: 30999-077

173

AO 245 S (Rev. 10/93)(N.D. TX. Rev. 2.0) Sheet 4 - Probation

Defendant: **KAREN E. TUCKER**
 Case Number: **3:97-CR-337-R (01)**

Judgment--Page 2 of 5

PROBATION

The defendant is hereby placed on Probation for a term of **THREE (3)** years.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse (Check, if applicable)

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable)

The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of Probation that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of Probation in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF PROBATION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer 10 days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245 S (Rev. 9/96) (N.D. TX. Rev. 2.0) Sheet 4a - Probation

Defendant: KAREN E. TUCKER
Case Number: 3:97-CR-337-R (01)

Judgment--Page 3 of 5

ADDITIONAL CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this Judgment:

Pursuant to the Mandatory Victim Restitution Act of 1996, the defendant shall make restitution in the amount of \$26,402.07, payable to the U.S. District Clerk for disbursement to:

Department of Health and Human Services

P. O. Box 17255

Baltimore, MD 21203-7255

6-96-00105-9

\$26,402.07

Payments to begin one month from the date judgment through monthly installments of at least \$200 per month. Further, pursuant to 18 USC § 3612(f)(3), the Court waives interest on the restitution.

The defendant shall refrain from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the probation officer makes a determination that the defendant is in compliance with the payment schedule.

The defendant shall participate in the Home Confinement Program for a period of 120 consecutive days. During this time, the defendant will remain at defendant's place of residence except for employment and other activities approved in advance by the defendant's probation officer. The defendant will maintain a telephone at defendant's place of residence without "call forwarding," a modem, "Caller ID," "call waiting," or portable cordless telephones for the above period. At the direction of the defendant's probation officer, the defendant shall wear an electronic monitoring device and follow electronic monitoring procedures specified by the defendant's probation officer.

The defendant shall provide to the probation officer any requested financial information.

AO 245 S (Rev. 9/96) N.D.Tx. Rev. 2.0) Sheet 6 - Restitution and ForfeitureDefendant: KAREN E. TUCKER
Case Number: 3:97-CR-337-R (01)

Judgment--Page 4 of 5

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Department of Health and Human Services Health Finance Administration Division of Accounting P.O. Box 17255 Baltimore, MD 21203-7255 Acct. No. 6-96-00105-9	\$26,402.07

Payments of restitution are to be made to the United States District Clerk.

Restitution shall be paid in equal monthly installments of at least \$200.00 beginning one month from date of judgment.

The Court determines that the defendant does not have the ability to pay interest and therefore waives the interest requirement pursuant to 18 U.S.C. § 3612(f)(3).

AO 245 S (Rev. 9/96)(N.D.Tx. Rev. 2.0) Sheet 7 - Statement of Reasons

Defendant: KAREN E. TUCKER
Case Number 3:97-CR-337-R (01)

Judgment--Page 5 of 5

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	13
Criminal History Category:	I
Imprisonment Range:	12 months to 18 months.
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ 26,402.07

The fine is waived because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): upon motion of the government, as a result of defendant's substantial assistance .

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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APR 15 2003

TEXAS PODIATRIC
MEDICAL EXAMINERS

No. 02-10040
USDC No. 3:99-CV-2599-R
3:97-CR-337-1-R

U. S. COURT OF APPEALS

FILED

APR - 5 2002

CHARLES R. FULBRUGE III
CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KAREN E. TUCKER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

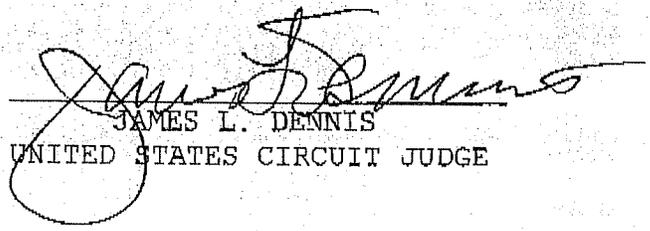
Karen Tucker seeks a certificate of appealability (COA) to appeal the district court's denial of her 28 U.S.C. § 2255 motion. She argues that she received ineffective assistance of counsel, rendering her guilty plea involuntary.

Tucker must obtain a COA to proceed on appeal. See 28 U.S.C. § 2253(c)(1)(B). A COA may be issued only if Tucker has made a "substantial showing of the denial of a constitutional right." Id. at 28 U.S.C. § 2253(c)(2).

O R D E R
No. 02-10040

- 2 -

It is unnecessary to address whether counsel's performance fell below an objective standard of reasonableness under Strickland v. Washington, 466 U.S. 668, 689-94 (1984), because Tucker has not made the requisite prejudice showing. See Armstead v. Scott, 37 F.3d 202, 210 (5th Cir. 1994) (court need not address both prongs of Strickland analysis if movant cannot make a sufficient showing on one). When Tucker argues that but for counsel's alleged error, she would have insisted on going to trial, she overlooks the fact that she would have been tried on all 25 counts of the indictment and that there was substantial evidence against her pertaining to those other charges. Tucker therefore has not made an "appreciable showing" that but for counsel's errors she would have insisted on going to trial. See, e.g., id. at 37 F.3d at 210 (where there was tremendous evidence against petitioner and favorable bargain, petitioner failed to prove he would have rejected plea bargain). Her ineffective-assistance claim fails, and, thus, COA is DENIED.



JAMES L. DENNIS
UNITED STATES CIRCUIT JUDGE

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APR 15 2003

TEXAS PODIATRIC
MEDICAL EXAMINERS

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10040

U.S. COURT OF APPEALS
FILED
APR 30 2002

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KAREN E TUCKER

Defendant - Appellant

WILLIAM H. FULFORD III
CLERK
Issued 4/30/02
mcs

Appeal from the United States District Court for the
Northern District of Texas, Dallas

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

BY THE COURT:

A member of this panel previously denied appellant's motion for certificate of appealability. The panel has considered appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.

MOT-29

U.S. COURT OF APPEALS SUPREME COURT OF THE UNITED STATES

FILED

OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

OCT 15 2002

October 7, 2002

CHARLES R. FULBRIDGE III
CLERK

Clerk
United States Court of Appeals for
the Fifth Circuit
600 Camp Street, Room 100
New Orleans, LA 70130



Re: Karen E. Tucker
v. United States
No. 02-5045
(Your No. 02-10040)

Dear Clerk:

3:97202-337-1-R

The Court today entered the following order in the above
entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter
William K. Suter, Clerk

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APR 15 2003

TEXAS PODIATRIC
MEDICAL EXAMINERS

Walters