

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
NO.: 1:07CR122-TSE**

UNITED STATES OF AMERICA)	
)	<u>MOTION TO CONTINUE</u>
VS.)	
)	SENTENCING HEARING
BOBBY LEE MEDFORD)	
)	

NOW COMES Bobby Lee Medford by and through his undersigned Counsel, Stephen P. Lindsay and M. Victoria Jayne, and moves the Court to continue sentencing in this case due to (extraordinary circumstances). In support of said motion counsel shows the Court:

1. On June 21, 2007 Mr. Medford received an implant spinal cord stimulator system at Parkridge Hospital in Hendersonville, N.C. This procedure followed 3 previous spinal operations performed by Dr. Lincoln of Asheville and Dr. Keith Maxwell, of Southeastern Sport Medicine in Asheville, N.C. In 2007 Dr. Maxwell and others determined that additional spinal surgeries would not relieve the chronic debilitating pain in Mr. Medford's spine, due in some part to severe peroneal fibrosis. The stimulator was implanted which, until mid July 2008 relieved approximately 50 % of Mr. Medford's pain and made it possible for Mr. Medford to walk, and stand without assistance.
2. In early July 2008 Mr. Medford advised family and Dr. Maxwell that the stimulator was not relieving the chronic pain in his lower back. In August 2008, Dr. Maxwell examined Mr. Medford and recommended immediate and necessary surgery to "revise" the stimulator so that the electrical currents would disperse differently across Mr. Medford's back. Dr. Maxwell advised that proper placement of the stimulator and electrical currents is critical to relieve pain, prevent the need for increased pain medication and increase the probability for Mr. Medford to be able to walk, stand or sit without assistance.
3. Although Mr. Medford was scheduled for surgery in early September 2008 and had participated in all necessary pre-op procedures, he was advised just prior to the scheduled surgery that his insurance company refused to pay for the operation. The overall costs are expected to be \$40,000.00 to \$50, 000.00. Dr. Maxwell's office immediately

appealed the refusal pursuant to Blue Cross Blue Shield's policy and procedures. Mr. has been awaiting the decision since that time.

4. Neither Mr. Medford nor his family have the financial means to pay for the costs of the surgery (see PSR pages 40-41).
5. While awaiting the appeal to the insurance company Mr. Medford's physical condition has deteriorated substantially. Currently Mr. Medford can not sit without being propped up; he can not walk or stand without assistance; he has fallen on several occasions during trips to either the bathroom or doctor visits. He has suffered a broken nose on one fall and currently has what appear to be fractured ribs from a recent fall. Due to his stimulator not functioning properly, Mr. Medford has had to rely on high dosage levels of pain medication which, although helping with the pain, has had an impact on his mental abilities.
6. On or about September 25, 2008 counsel is informed, believes and alleges that USPO Eric Simpson observed during a home visit that Mr. Medford is non-ambulatory, is confined to his bed, and has lost a significant amount of weight since their last visit.
7. Mr. Medford, his family and his physician Dr. Maxwell have diligently pursued the insurance company's refusal to pay for the surgery since early September 2008. Dr. Maxwell has stressed that the surgery is necessary to ensure not only the probability of Mr. Medford again being able to walk and stand, but also to provide Mr. Medford with a significant and meaningful reduction in his debilitating, chronic pain.
8. **On October 1, 2008**, Dr, Maxwell advised Mr. Medford that the insurance company had that day faxed to him confirmation that Blue Cross Blue Shield will now pay for the surgery. Dr. Maxwell immediately scheduled the surgery for October 13, 2008 at Parkridge Hospital in Hendersonville, North Carolina.
9. According to Dr. Maxwell, Mr. Medford can expect a recovery period of approximately 6 to 8 weeks which must include scheduled physical therapy and pain medication management in addition to the recuperation from the surgery. Said therapy may be scheduled at his office in Asheville.
10. Due to Mr. Medford's pronounced deterioration and constant pain it has been increasingly difficult – in fact almost impossible – for him to meet with counsel to discuss the PSR, objections, sentencing memorandum and sentencing hearing. Although Mr. Medford has

made diligent efforts to attempt to listen and consult with counsel, his current physical condition has precluded him from any meaningful discussions with counsel and has prevented him, in counsel's opinion, from understanding the content thereof.

11. Counsel has diligently attempted to prepare relevant objections and a sentencing memorandum for the Court. Due to Mr. Medford's unstable condition over the last several months counsel is not assured that Mr. Medford adequately understands the PSR or that he can adequately participate in a sentencing hearing on October 6, 2008.
12. Although Counsel has diligently worked to prepare for the scheduled sentencing date of October 6, 2008 they request a continuance to allow Mr. Medford to obtain the surgery that his physicians indicate is medically necessary. This motion is being made by undersigned counsel in good faith and in genuine recognition of their responsibility as officials of the Court to ensure that the sentencing of Mr. Medford is performed at a time when he is medically capable of meaningfully participating and assisting counsel. This motion is not being filed for purposes of improper delay or any other improper purpose.

WHEREFORE Counsel prays the Court continue the sentencing of Mr. Medford so that he may have the necessary surgery, now finally scheduled for October 13, 2008, receive the benefit of Blue Cross Blue Shield payment for the surgery less his \$50.00 deductible , and participation in all recommended post-operative therapy prescribed by his doctors. Further, that the court continue the sentencing hearing to give counsel sufficient time following Mr. Medford's surgery to have meaningful consultations with him so as to adequately prepare his sentencing memorandum for the Court and prepare him for his sentencing.

Respectfully submitted this the 2nd day of October , 2008.

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FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO.: 1:08-cr-122

UNITED STATES OF AMERICA)
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 VS.)
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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2008, I electronically filed the foregoing Motion to Continue with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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