

Filed 10-25-01  
Clerk, U. S. District Court  
Western District of Texas  
By [Signature]  
Deputy

# United States District Court

WESTERN DISTRICT OF TEXAS

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

THE RESIDENCE LOCATED AT 4 AUBREY COURT  
SAN ANTONIO, TEXAS 78216

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: SA-01-501M

I RALPH BICKFORD being duly sworn depose and  
s a y :

I am a(n) SPECIAL AGENT, FOOD AND DRUG ADMINISTRATION and have reason to believe  
Official Title

that  on the person of or  on the property or premises known as (name, description and/or location)  
SEE ATTACHMENT A

in the WESTERN District of TEXAS

there is now concealed a certain person or property, namely (describe the person or property to be seized)  
SEE ATTACHMENT B

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)  
PROPERTY THAT CONSTITUTES EVIDENCE OF THE COMMISSION OF A CRIMINAL OFFENSE

concerning a violation of Title 21 United States code, Section(s) 331, 822, 841(a)(1) and 846

The facts to support a finding of Probable Cause are as follows:  
SEE ATTACHED AFFIDAVIT

A true copy of the original. I certify,  
Clerk, U. S. District Court  
By: [Signature]  
Deputy

Continued on the attached sheet and made a part hereof.

Yes  No

Ralph Bickford  
Signature of Affiant

Sworn to before me, and subscribed in my presence

October 25, 2001  
Date

at SAN ANTONIO, TEXAS  
City and State

PAMELA A. MATHY  
~~JOHN W. ERMONO~~ U. S. MAGISTRATE JUDGE  
Name and Title of Judicial Officer

Pamela Mathy  
Signature of Judicial Officer

## ATTACHMENT A

### Description of premises at:

4 Aubrey Court  
San Antonio, Texas 78216

A single-family two-story residence with red brick and white trim, located in a gated community known as "The Enclave." This residence is on the south side of Aubrey Court, and is the second house on the left, west from the intersection of Aubrey Court and Stirman Way. The driveway off Aubrey Court leads to a two-car garage on the right side of the house. The street number "4" is on a bronze-colored plaque mounted on the front of the house between the garage doors.

The premises to be searched includes any outbuildings located at this address as well as any vehicles parked at this address.

See photographs following --





## ATTACHMENT B

### **Items to be seized:**

1. Controlled substances and items used to manufacture, process, package, store and/or administer controlled substances.
2. Documents and records of the acquisition, receipt, inventory, return (credit), transfer, and dispensation of controlled substances.
3. Documents and records that relate to internet and/or telephone consultations, and "night patients," including physician agreements or contracts, oral, written and facsimile prescriptions and prescription drug orders, patient consultation forms, patient charts, medical records, laboratory and other diagnostic procedures, test results, screening records, and facsimile transmittals for any such documents.
4. All records of all domestic and foreign financial institution accounts (including checking, savings, certificates of deposit, money market, loans, lines of credit, investment, brokerage, credit card, and credit card merchant accounts), such as periodic statements, deposits, withdrawals, checks, debits, credits, wire transfers, loan applications, loan disbursement and repayment records, official checks, credit card charge documents, and merchant account documents.
5. Records of acquisition, ownership and disposition of stocks, bonds, mutual funds, business interests, and other investment vehicles.
6. Other business records such as ledgers, journals, invoices, bills, statements, appointment books, correspondence, notes, financial statements, remittance advices, vehicle and vessel registrations, and travel records.

**SEALED**

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

IN THE MATTER OF THE  
APPLICATION OF THE UNITED  
STATES OF AMERICA FOR A  
SEARCH WARRANT AUTHORIZING  
THE SEARCH OF:

Residence located at  
4 Aubrey Court  
San Antonio, Texas 78216  
(See Attachment A)

**AFFIDAVIT OF U.S. FOOD AND DRUG ADMINISTRATION SPECIAL AGENT**  
**RALPH BICKFORD**

I, Ralph Bickford, am a criminal investigator employed by the United States Food and Drug Administration's Office of Criminal Investigations (FDA), currently assigned to the Austin, Texas, Resident Office. I have been employed by FDA for approximately nine (9) years. Prior to my employment by FDA, I was employed as a criminal investigator by the Internal Revenue Service Criminal Investigation Division for approximately four (4) years. During the course of my employment I have been personally involved in a number of financial investigations, many of which involved illegal distribution of drugs. Based on my investigative experience, I am familiar with the normal patterns and procedures through which drug distribution organizations conduct their business. I have also had discussions with federal, state and local law enforcement officers with substantial experience in the investigation of such organizations. I have personally participated in

this investigation and am thoroughly familiar with the information contained in this affidavit either through personal investigation or through discussions with other law enforcement personnel. The following information is derived from my personal observations, surveillance, and my review of physical evidence, as well as the review of reports of, and discussions with other investigators who have personal knowledge of the matters covered in this investigation. All of the facts set forth below are true and correct to the best of my knowledge.

1. Since as early as 1999, FDA and the U.S. Drug Enforcement Administration (DEA) have been conducting a criminal investigation of S & H Script Shop, Inc., Pill Box Pharmacy, internet websites identified as *thepillbox.com*, *medicalcenter.net*, and *physiciansreferral2000.net* (collectively referred to as "PILL BOX"); pharmacist **WILLIAM ADAMS STALLKNECHT**; physician **ERNESTO ALFONSO CANTU**; **BRIAN THOMAS HILDEBRAND**; and others known and unknown, in connection with violations of 21 U.S.C. §§ 841(a)(1) and 846, as well as violations of the Federal Food Drug and Cosmetic Act, 21 U.S.C. §§ 353(b)(1) and 331(k).

2. STALLKNECHT (with Raymond Hernandez, Jr.) co-owned and operated a number of traditional "brick and mortar" retail community pharmacies doing business as PILL BOX in San Antonio, Texas. Hernandez, who discontinued his business relationship with STALLKNECHT in early 2001, is a cooperating witness in this investigation. The website *thepillbox.com* specifically offered the drugs Viagra (approved for treatment of male erectile dysfunction), Propecia (approved for treatment of male pattern baldness), Claritin (approved for treatment of allergies) and Xenical (approved for treatment of obesity). Based on interviews with individuals who had

purchased prescription drugs through the website, as well as corroborating undercover purchases, it was determined that the drugs were initially made available through the following methods:

a. A customer with a prescription from his or her personal physician could forward it to PILL BOX, who would then dispense the drug from the pharmacy via mail or other delivery service.

b. A customer with no prescription could complete an on-line form, which requested information such as name, address, telephone number, email address, credit card account number, date of birth, height, weight and a few questions specific to the drug being purchased. This form was then submitted electronically to PILL BOX, or could also be completed, printed and submitted via facsimile or mail to PILL BOX. This form was then forwarded to a physician for review. If the questions were answered "correctly," a prescription would be written by the physician and forwarded to PILL BOX, who would dispense drug via mail or other delivery service. According to statements displayed on the website *medicalcenter.net*, the customer would not be charged a consultation fee for the physician's services if the physician did not approve the request for the prescription, i.e. the physician was paid only if a prescription were issued.

3. A customer who had no prescription and wished to purchase a drug other than the four previously mentioned was directed to contact HILDEBRAND, who would schedule a telephone consultation with a physician. After the customer provided to HILDEBRAND personal information such as name, address, telephone number, credit card account number, date of birth, height and weight, he or she received the telephone number of a physician to call at a specified date and time. At this point, HILDEBRAND

would forward to the physician a prescription document for the physician to use when the customer called for the consultation.

4. The prescription document consisted of a full-sized sheet of paper that contained the PILL BOX customer's personal information (as described in paragraph 3 above). It also had preprinted on it various places to record the customer's known drug allergies, current medications, surgical history, and reason for the requested consultation. At the bottom of the page was a standard preprinted physician's prescription form bearing the name, address, telephone number, and DEA number of the physician, a place for the name, dosage, quantity, directions for use and authorized refills of the drug being prescribed, and signature lines authorizing the drug to be dispensed as written or permitting the dispensing of a generic equivalent.

5. In addition to the above-described prescription documents delivered to physician, a listing of all the consultations scheduled for each day was provided by HILDEBRAND. These consultations were usually scheduled to begin at 9:00 AM and continue throughout the day, ten minutes apart.

6. Following the customer's telephone consultation with the physician, the physician would issue a written prescription order and forward it to PILL BOX (generally by facsimile, followed by mailing of the original), from where the drug would be dispensed via mail or other delivery service.

7. During the course of this investigation, Your Affiant learned from Hernandez that during a time in October, 1999, when STALLKNECHT was on vacation, he (Hernandez) covered the pharmacy location where STALLKNECHT normally worked, 7718 Louis Pasteur Drive, San Antonio, Texas 78229. During that time, he inadvertently discovered

a document entitled "MC Weekly Statement -- Statement for week of: 10/15/1999". This document contained a list of checks and amounts, indicating that funds being collected by PILL BOX were being disbursed by STALLKNECHT in the form of payments to himself, a physician and the company's internet website webmaster

8. According to records maintained by the Texas State Board of Medical Examiners (TSBME), CANTU is a physician, licensed to practice medicine in the State of Texas (license # F7416).

9. During the course of this investigation, your affiant interviewed an associate/employee of CANTU. This individual related that CANTU operates a medical practice (referred to as the diet clinic) at 12151 Jones Maltsburger, Suite 113, San Antonio, Texas 78247. He also operates a medical practice (a general practice office) located at 3424 Southwest Military Drive, Suite 603, San Antonio, Texas 78211. CANTU lives at 4 Aubrey Court, San Antonio, Texas 78230, and has lived there for about three years. Anne Malley lives with at that location with CANTU, but their marital status is unknown.

10. Your affiant has searched law enforcement records and has found the following.

a. On or about November 21, 1988, in Miami, Florida, Malley was found attempting to smuggle over \$70,000 US currency which she concealed under her clothing. She was arrested on a charge of violation of the Bank Secrecy Act, but was not prosecuted. Her husband at that time, Julio Alberto Corro, was convicted on federal narcotics charges and is currently incarcerated.

b. On or about May 16, 1992, CANTU was arrested by Bexar County Sheriff Office on charges of making a terroristic threat and assault with bodily injury. The charges were dismissed on August 21, 1992.

c. On or about April 7, 1995, CANTU was arrested by San Antonio Police Department on charges of possession of Penalty Group 1 controlled substances. The charges were dismissed on January 15, 1997.

11. Documents obtained from PILL BOX on June 12, 2001, during the execution of a search warrant authorized by United States Magistrate Judge John Primomo, Western District of Texas, San Antonio Division included bank records. Included in those records were cancelled checks written to various physicians, including CANTU, as well as to Malley, for consultation fees collected by PILL BOX.

12. Other records seized at that time included various weekly summaries of consultations by all physicians for PILL BOX customers. These documents were dated primarily after January 1, 2001. Such weekly summary included a daily record of the number of net paid consultations for which payment was to be made to the consulting physician at a rate of \$45 per consultation, as well as the total number of net paid consultations for the week.

13. On weekly summaries for payments for the periods ending April 25, 2001, May 2, 2001, and May 9, 2001, the name Anne Malley was listed on the summary in the list of physicians names. Beside the summary column listing the amount payable to each physician, adjacent to the entry for Malley was the parenthetical notation "Dr. Cantu."

14. See the following table for a summary of the data taken from the documents described in paragraphs 12 – 14.

Payee	Check #	Check Date	# Consults	Total	Less	Net Paid
CANTU	1049	12-28-00				\$4,005
CANTU	1054	1-4-01				2,340
CANTU	1059	1-10-01				3690
CANTU	1064	1-18-01				4,470
CANTU	1105	3-9-01	198	\$8,910		8,910
CANTU	1109	3-16-01	211	9,495		9,495
CANTU	1115	3-23-01	215	9,675		9,675
CANTU	1119	3-30-01	182	8,190	\$500	7,690
CANTU	1122	4-6-01				7,875
CANTU	1126	4-12-01	201	9,045		9,045
Malley	1131	4-19-01				5,850
Malley	1136	4-26-01	164	7,380		7,380
Malley	1142	5-3-01	210	9,450	500	8,950
Malley	1145	5-10-01	181	8,145		8,145
Malley	1149	5-18-01				5,670
Malley	1153	5-24-01				6,345

15. Based on a review of records subpoenaed from the automobile dealership Mercedes-Benz of San Antonio, your affiant has learned that checks # 1119 and # 1122, payable to CANTU, and check # 1131, payable to Malley, were endorsed over to that dealership on or about April 24, 2001, and used in the purchase of an automobile registered to Anne Malley. The three checks, totaling \$21,415, were used as the down payment for the 2001 Mercedes-Benz E320, which sold for \$54,575.

16. TSBME issued a policy statement at their December 8 - 11, 1999 board meeting declaring that an online or telephonic evaluation by questionnaire is inadequate to establish a valid physician-patient relationship. On December 21, 1999, this policy statement was published. On November 19, 2000, this policy statement was codified into Board rules, which are authorized by the Texas Occupations Code to regulate the practice of medicine and set the standard of care in the State of Texas.

17. As of a date shortly after December 21, 1999, PILL BOX posted on their website a statement that due to a ruling by the TSBME, PILL BOX was unable to provide on-line

consultations. Potential customers who had previously submitted questionnaires were directed to phone HILDEBRAND to schedule a telephonic consultation with a physician, much like the system used for customers for drugs not posted on the site. The system was later changed so that customers were directed to submit an electronic request for physician consultation (via internet website *www.physiciansreferral2000.com*) to HILDEBRAND via e-mail.

18. During the course of the execution of the search warrant at PILL BOX, a mirror-image copy was made of the computerized database which records the dispensation of prescriptions by the PILL BOX.

a. Analysis of this database reveals the following quantities and retail selling price of hydrocodone and diazepam which were dispensed by PILL BOX during the period of January 1, 2000 through June 12, 2001, based on prescriptions written by CANTU.

1. 869,834 dosage units of hydrocodone sold for \$615,754.40.
2. 195,951 dosage units of diazepam sold for \$123,226.20.

b. Analysis of this database reveals the following quantities and retail value of hydrocodone and diazepam which were dispensed PILL BOX during the period of January 1, 2000 through June 12, 2001, based on prescriptions written by all physicians.

1. 7,732,658 dosage units of hydrocodone sold for \$4,861,753.97.
2. 1,305,676 dosage units of diazepam sold for \$749,260.25.

19. Hydrocodone is the generic name for an addictive prescription painkiller that is classified as a Schedule II controlled substance. It is classified as a Schedule III controlled substance when dispensed in amounts of not more than 15 milligrams per

dosage unit and when combined with other ingredients in recognized therapeutic amounts.

20. Diazepam is the generic name for an addictive sedative and antianxiety agent and muscle relaxant that is classified as a Schedule IV controlled substance. It is more commonly referred to by one of its brand names, Valium.

21. Further information provided to your affiant by an associate/employee of CANTU included the following information.

a. At the diet clinic during normal office hours, CANTU sees patients for weight loss treatment. According to CANTU's employees, however, he claims that he sees patients "after hours" for pain treatment. These patients are often referred to as "night patients." CANTU's employees have never seen any of these patients.

b. CANTU's employees state that while there are scheduled days and times when each office is to be open and when he is to be there, he keeps irregular office hours, and frequently misses appointments.

c. Initially, employees in CANTU's medical offices were not involved with CANTU's telephone consultations with PILL BOX customers. The packets of prescription documents (to be used for the telephone consultations, and described in paragraphs three and four above) were delivered to the diet clinic by HILDEBRAND after office hours. When employees found the packet at the office the next day, they were instructed by Malley to not open the packet, but to give it to CANTU, who then conducted the telephonic consultations with the PILLBOX customers.

d. Later, employees were directed by Malley to receive the telephone calls from the PILL BOX customers and to talk to them. If a customer were to ask the reason

he or she was not speaking to CANTU, employees were to tell the caller that he was in a meeting or in the emergency room.

e. Identification of the person placing the call was confirmed by CANTU's employees based on the fact that the caller knew the date and time scheduled for the consultation and had actually placed the telephone call for the consultation.. The conversation usually consisted of the employee asking for the caller's drug allergies, surgical history, and current medication. If this was not already shown on the prescription document, the employee wrote it in. The reason for the call was asked and also recorded on the form. Often, the caller also indicated the drug they were seeking, as well as the dosage, quantity, and number of refills. This would then be written on the form.

f. CANTU's employees protested having to talk to the PILL BOX customers, stating that that they did not know what they were supposed to be asking the caller. Malley told them that they had to do it because it was part of their job. Further, she explained, CANTU was under a lot of stress, and could not sleep at night, so they just had to do this for him anyway.

g. After the calls were completed for the day, CANTU would then sign off on the prescription documents. These were later picked up by HILDEBRAND when he delivered the next day's forms to the diet clinic.

h. Malley took PILL BOX customer calls also, but did so from the residence, not at the medical offices.

i. In the spring of this year on an occasion when CANTU's employees were in his residence, prescription documents were seen there, including some prescription

documents stored in a safe kept in a closet. Money was also seen stored in this safe.

Employees have not had access to the safe or its contents since that one occasion.

j. CANTU's employees state that prescription documents are not stored at CANTU's medical offices.

k. CANTU has written numerous prescriptions for injectible Demerol, purportedly to be administered to "night patients." PILL BOX dispensed such prescriptions, many of whom were picked up at PILL BOX by Malley.

22. Demerol is one of the brand names for the drug meperidine, an addictive painkiller that is classified as a Schedule II controlled substance.

23. Further information provided to your affiant by an associate/employee of CANTU included the following information.

a. CANTU's employees report that a box of syringes normally would have lasted a month when used for patients being seen at the diet clinic. However, as many as three boxes a month were being purchased by employees. CANTU was often seen taking numbers of syringes, claiming that they were to be used for the night patients. A normal month's supply of alcohol pads, ordered for use when injecting medications, also often lasted only a few days.

b. Prescriptions for injectible Demerol have been written in the name of at least one employee. When the employee refused to take such a prescription to PILL BOX to be filled, stating that he/she did not take Demerol, the employee was told by Malley to go ahead and get the prescription, because it was for one of the "night patients".

c. On an occasion at CANTU's residence, in the spring of this year, CANTU instructed an employee to give Malley two intramuscular (hip) injections of Demerol. The employee refused, saying this was too much to administer. CANTU then administered it himself. On another occasion this past summer, while at CANTU's residence, Malley told a CANTU employee to give her an intra-venous injection of Demerol. While the employee did not see the Demerol, the employee assumed that Malley had it with her or available for such use, had the employee agreed to administer it. The employee refused to administer the drug. Prior to this most recent incident, CANTU's employees had seen vials of Demerol stored in the top drawer of the chest of drawers in Malley's upstairs bedroom.

**CONCERNING THE PREMISES LOCATED AT**  
**4 Aubrey Court**  
**San Antonio, Texas 78216**

1. CANTU lives at 4 Aubrey Court, San Antonio, Texas 78230, and has lived there for about three years. Anne Malley lives with at that location with CANTU, but their marital status is unknown.
2. On October 12, 2001 and again on October 24, 2001, a Ford Explorer bearing Texas license plate G87-JVF, registered to CANTU, was observed by your affiant parked at 4 Aubrey Court, San Antonio, Texas 78230.
3. A review of public records of Bexar County indicates that the residence located at 4 Aubrey Court is owned by Monte C. Malone and Jeanette A. Krzewinski, of Dallas, Texas.
4. Physicians are required by TSBME Rule (Chapter 165.1(a)) to "maintain an adequate medical record for each patient. For purposes of this section 'adequate medical

record' shall mean any records documenting or memorializing the history, diagnosis, and treatment of any patient." Such records are required to be maintained for seven years.

5. Physicians are expected, by reasonable standards of care, to keep competent medical records, such that a subsequent treating physician should be able to garner medical information about patient history, evaluation, diagnosis and treatment.

6. While the prescription documents (used for the telephone consultations with PILL BOX customers) are not kept in CANTU's medical offices, these documents have been seen stored in his residence as recently as the spring of this year. It is, therefore, expected that these records will be found at this location, as well as CANTU's personal financial records and the business/financial records of the relationship between PILL BOX and CANTU.

7. Controlled substances, the use of which has been witnessed at CANTU's residence, are also expected to be found at that location.

Further your Affiant sayeth not.

Sworn and subscribed this 25<sup>th</sup> day of October, 2001.

Ralph Bickford

Special Agent Ralph Bickford

Signed and sworn before me this 25<sup>th</sup> day  
of October, 2001 at 4:45 p.m.

Patricia Walley  
U.S. Magistrate Judge