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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MJ 14-0852

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UNITED STATES OF AMERICA

TO BE FILED UNDER SEAL

- against -

AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR AN
ARREST WARRANT

MICHAEL BELFIORE,

DEFENDANT.

(21 U.S.C. § 841(a)(1))

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EASTERN DISTRICT OF NEW YORK, SS:

JOSEPH D. HILL, being duly sworn, deposes and says that he is a Task Force Officer and a deputy U.S. Marshal assigned to the Drug Enforcement Administration ("DEA") Task Force, duly appointed and acting as such.

On or about and between March 15, 2013 and August 12, 2013, both dates being approximate and inclusive, within the Eastern District of New York, the defendant MICHAEL BELFIORE, did knowingly and intentionally distribute a controlled substance, which offense involved a substance containing oxycodone, a Schedule II controlled substance, without a legitimate medical purpose.

(Title 21, United States Code, Section 841(a)(1))

The source of my information and the grounds for my belief

are as follows:¹

1. I have been a police officer with the Nassau County Police Department for approximately 21 years and assigned to investigate narcotics offenses for approximately 14 years. I am currently assigned to the Long Island District Office of the DEA. During my 4 year tenure with the DEA, I have participated in numerous narcotics investigations in which prescriptions for Schedule II and Schedule III controlled substances have been issued by doctors to patients outside the usual course of professional practice and not for a legitimate medical purpose.

2. I am familiar with the information contained in this affidavit based on my own personal participation in the investigation, my review of documents, my training and experience, video and audio recordings made by an undercover police officer, and discussions I have had with other law enforcement personnel concerning the investigation described herein. I have also conferred with a medical doctor who is a pain management specialist about this investigation.²

¹ Because the purpose of this Affidavit is to set forth only those facts necessary to establish probable cause to arrest, I have not set forth all of the facts and circumstances of which I am aware.

² Any statements attributable to individuals herein are set forth in sum and substance and in part.

INTRODUCTION

3. Among other duties, I am participating in an investigation of the defendant MICHAEL BELFIORE, a doctor of Osteopathic medicine ("DO"), with a self-described specialty in family medicine and dermatology, for the illegal issuance of at least six prescriptions for oxycodone outside the usual course of professional practice and not for a legitimate medical purpose.

THE DISTRIBUTION OF CONTROLLED SUBSTANCES GENERALLY

4. The Controlled Substances Act, 21 U.S.C. §§ 801 et seq., and regulations promulgated thereunder, classify controlled substances in five schedules. Schedule I drugs, including, for example, heroin and LSD, do not have an acceptable medical use in the United States. Schedule II through Schedule V drugs have acceptable medical uses. The medical use of substances in Schedule II, including, for example, oxycodone, is severely restricted because such drugs have a high abuse potential. Substances in Schedule III, including, for example, Vicodin, have an abuse potential less than those in Schedule II, but more than Schedule IV controlled substances, and so forth. Schedule V drugs consist primarily of preparations containing limited quantities of certain narcotics and stimulant drugs.

5. Pursuant to 21 C.F.R. §§ 1306.11(a) and 1306.21(a), a controlled substance listed in Schedules II, III, IV or V, that is a prescription drug, as determined under the Food, Drug & Cosmetics Act, 21 U.S.C. §§ 301, et seq., may be dispensed only if prescribed by an authorized practitioner.

6. 21 C.F.R. § 1306.04 sets forth the purpose of the issuance of a prescription. It says, in pertinent part, in order for "[a] prescription for a controlled substance to be effective, [it] must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner... [a]n order purporting to be a prescription issued not in the usual course of professional treatment... is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances."

7. Oxycodone hydrochloride (oxycodone), is a semi-synthetic opioid analgesic medications, and Schedule II controlled substance generally prescribed for the relief of moderate to severe pain.

BACKGROUND OF THE INVESTIGATION

8. In the Spring of 2013, the DEA began an investigation into the defendant MICHAEL BELFIORE'S medical practice after receiving complaints about his prescription writing activities from several pharmacists, law enforcements officers and multiple confidential sources. The complaints included allegations that the defendant BELFIORE was illegally issuing prescriptions to individuals who were abusing and/or diverting oxycodone pills. Defendant BELFIORE is a sole practitioner with an office in Merrick, New York.

9. Thereafter, the DEA obtained records from the New York State Bureau of Narcotics Enforcement (BNE) for prescriptions written by defendant BELFIORE between January 2010 and March of 2013. In that time period, defendant BELFIORE wrote approximately 5,000 oxycodone prescriptions for over 600,000 oxycodone pills, which is an extremely high number of oxycodone prescriptions and oxycodone pills issued by a sole family practitioner, especially in light of the defendant BELFIORE'S specialty area: general family medicine and dermatology.

PROBABLE CAUSE

10. On March 15, 2013, a Nassau County detective, acting in an undercover capacity ("UC"), went to the defendant BELFIORE'S

office after making an appointment to see the defendant BELFIORE in a professional capacity. The UC met with the defendant BELFIORE, falsely claimed to have back and shoulder pain and was "examined" by BELFIORE for approximately 30 seconds. During the "visit," the UC said, in sum and substance, that he was dating a girl who had "oxy 30's" and, after work, the UC would take one of her pills because the UC "liked the way it felt." The UC further stated that he and his girlfriend broke-up and that a guy that the UC works with, one of the defendant BELFIORE's patients, has also given the UC oxycodone pills in the past. Defendant BELFIORE thereafter issued the UC a prescription for ninety 30 milligram oxycodone pills as requested. The UC paid \$425 in cash for the visit and prescription.

11. On five more occasions thereafter, defendant BELFIORE issued a total of five prescriptions for 90 oxycodone pills at 30 milligrams each to the UC, in exchange for \$275 in cash, all without the UC providing any documentation of his injury and obviously with no legitimate medical need (as the UC had no back or neck injuries). Each of these "visits" was video and audio recorded by the UC. On five of those occasions, medical technicians at defendant BELFIORE's office drug tested the UC by taking an oral swab to insure that the UC was taking the oxycodone as directed (with the expectation that the swab would reveal the presence of oxycodone in

the UC's saliva). However, four of the drug tests results were "negative" for the presence of oxycodone (a strong indicator of abuse and/or diversion) and one result was positive for oxycodone with no metabolites (an indicator that either oxycodone was not ingested or the sample was contaminated).

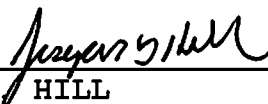
12. During one of the visits by the UC to defendant BELFIORE'S office, the UC advised BELFIORE that he was back together with his girlfriend and was sharing his oxycodone pills with her. During another visit, defendant BELFIORE urged the UC to get his back x-rayed so that "when the state calls and says 'why are we giving meds,' I can say something." Finally, during yet another visit, defendant BELFIORE told the UC "if the DEA comes into the office and asks about his (the UC's) prescriptions, there will be a problem."

13. Between March 15, 2013 and August 12, 2013, the defendant BELFIORE issued six prescriptions for oxycodone to the UC for a total of 540 pills.

14. I have consulted with Seth Waldman, M.D., a pain management specialist and the Director of the Division of Pain Management at the Hospital for Special Surgery in New York City. After reviewing the file in this matter, Dr. Seth Waldman, opined that that all prescription issued by defendant BELFIORE to the UC were issued outside the usual course of professional practice and


not for a legitimate medical purpose.

WHEREFORE your affiant respectfully requests that a warrant be issued for the defendant MICHAEL BELFIORE so that he may be dealt with according to law.



JOSEPH D. HILL
TFO, DEA

Sworn to before me this
6th day of October, 2014



THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK