UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal No. 19CR 599
	§	UNDER SEAL
KESHA LYNETTE HARRIS a/k/a	§	
Kesha Harris Finnister,	§	
Defendant.	§	

INDICTMENT

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times material to this Indictment, unless otherwise specified:

1. The Controlled Substances Act ("CSA") governed the manufacture, distribution, and dispensing of controlled substances in the United States. With limited exceptions for medical professionals, the CSA made it unlawful for any person to knowingly or intentionally manufacture, distribute, or dispense a controlled substance or conspire to do so.

2. The CSA and its implementing regulations set forth which drugs and other substances are defined by law as "controlled substances," and assigned those controlled substances to one of five schedules (Schedule I, II, III, IV, or V) depending on their potential for abuse, likelihood of physical or psychological dependency, accepted medical use, and accepted safety for use under medical supervision.

3. A controlled substance assigned to "Schedule II" meant that the drug had a high potential for abuse, the drug had a currently accepted medical use in treatment in the United States, or the drug had a currently accepted medical use with severe restrictions.

4. Pursuant to the CSA and its implementing regulations:

a. Oxycodone was classified as a Schedule II controlled substance. 21 C.F.R. § 1308.12(b)(1)(xiii). Oxycodone, sometimes prescribed under brand names, was used to treat severe pain. Oxycodone, as with other opioids, was highly addictive.

b. At all times relevant, and as of October 6, 2014, Hydrocodone was classified as a Schedule II controlled substance. 21 C.F.R. § 1308.12(b)(1)(vi). Prior to October 6, 2014, Hydrocodone was classified as a Schedule III controlled substance. Hydrocodone, sometimes prescribed under brand names including Norco, Lortab, and Vicodin, was used to treat severe pain. Hydrocodone, as with other opioids, was highly addictive.

c. Carisoprodol, was classified as a Schedule IV controlled substance. Carisoprodol, sometimes prescribed under the brand name Soma, was a purported muscle relaxant and was highly addictive.

5. It was well known that the combination of high-dose opioids, including oxycodone or hydrocodone and carisoprodol significantly increased the risk of patient intoxication and overdose. Moreover, prescribing oxycodone or hydrocodone and carisoprodol often created a significant risk of diversion because the two drugs, prescribed together, were often highly abused and sought for a non-legitimate medical purpose due to the increased "high" a user may experience from taking hydrocodone or oxycodone along with carisoprodol.

6. Accordingly, for a treating physician to prescribe the combination of high-dose opioids and carisoprodol for a legitimate medical purpose, the physician needed to determine, at a minimum, that the benefits of the drugs outweighed the risks to the patient's life.

7. Medical practitioners, such as pharmacists, physicians, and nurse practitioners, who were authorized to prescribe or distribute controlled substances by the jurisdiction in which they were licensed to practice were authorized under the CSA to prescribe, or otherwise distribute, controlled substances, if they were registered with the Attorney General of the United States. 21

U.S.C. § 822(b). Upon application by the practitioner, the Drug Enforcement Administration ("DEA") assigned a unique registration number to each qualifying medical practitioner including physicians, pharmacies, and nurse practitioners.

8. Chapter 21 of the Code of Federal Regulations, Section 1306.04 governed the issuance of prescriptions and provided, among other things, that a prescription for a controlled substance "must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." Moreover, "[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 [the CSA] and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances."

9. Chapter 21 of the Code of Federal Regulations, Section 1306.06 governed the filling of prescriptions and provided: "A prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy, a registered central fill pharmacy, or registered institutional practitioner."

10. All prescriptions for controlled substances must be "dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner." 21 C.F.R. § 1306.05(a). "The refilling of a prescription for a controlled substance listed in Schedule II is prohibited." 21 C.F.R. § 1306.12(a); 21 U.S.C. § 829(a).

11. The Texas Prescription Monitoring Program ("PMP") was a database of all reported prescriptions for controlled substances that were issued and dispensed in Texas. The database was maintained by the Texas Department of Public Safety ("DPS") up until September 1, 2016, and thereafter by the Texas State Board of Pharmacy ("TSBP"). Pharmacies were required to report to the PMP all controlled substances dispensed, including: the patient's name, the particular controlled substance and dosage dispensed, the quantity dispensed, the number of days supplied, the prescribing physician's name, the date the prescription was issued, the dispensing pharmacy's name, the type of payment, and the date the controlled substances were dispensed.

12. TSBP Rule 291.29 related to the Professional Responsibility of Pharmacists, and instructed a pharmacist to make every reasonable effort to ensure that any prescription drug order has be issued for a "legitimate medical purpose by a practitioner in the course of medical practice."

13. TSBP Rule 291.29(c) provided reasons to suspect that a prescription may have been authorized in the absence of a valid patient–practitioner relationship or in violation of the practitioner's standard of practice, including:

a. a disproportionate number of patients of the practitioner receive controlled substances;

b. the manner in which the prescriptions are authorized by the practitioner or received by the pharmacy;

c. the geographical distance between the practitioner and the patient or between the pharmacy and the patient;

d. knowledge by the pharmacist that the patient has exhibited doctor-shopping or pharmacy-shopping tendencies.

14. When pharmacies obtained a pharmacy license, TSBP distributed to pharmacies a document called: "Red Flags Check List for Pharmacies, YOU MIGHT BE A PILL MILL IF...," which largely mimicked TSBP Rule 291.29(f). The document identified the following "red flags," among others, related to non-therapeutic dispensing of controlled substances:

a. the pharmacy dispenses a reasonably discernible pattern of substantially identical prescriptions for the same controlled substances, potentially paired with other drugs, for numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

b. the pharmacy operates with limited hours of operation or closes after a certain threshold of controlled substance prescriptions are dispensed;

c. prescriptions by a prescriber presented to the pharmacy are routinely for controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants, psychostimulants, and/or cough syrups containing codeine, or any combination of these drugs;

d. prescriptions for controlled substances are commonly for the highest strength of the drug and/or for large quantities (e.g., monthly supply), indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

e. dangerous drugs or over-the-counter products (e.g., multi-vitamins or laxatives) are consistently added by the prescriber to prescriptions for controlled substances presented to the pharmacy, indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

f. the practitioner's clinic is not registered as, and not exempted from registration as, a pain management clinic by the Texas Medical Board, despite prescriptions by the practitioner presented to the pharmacy indicating that the practitioner is mostly prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone, or any combination of these drugs;

g. the controlled substance(s) or the quantity of the controlled substance(s) prescribed are inconsistent with the practitioner's area of medical practice;

h. the Texas Prescription Monitoring Program indicates the person presenting the prescriptions is obtaining similar drugs from multiple practitioners, and/or that the persons is being dispensed similar drugs at multiple pharmacies;

i. person's pay with cash or credit card more often than insurance;

j. your pharmacy charges and persons are willing to pay more for controlled substances than they would at a nearby pharmacy;

k. sporadic and non-consistent dispensing volume (including zero dispensing) varies from day to day, and week to week; and

l. your pharmacy routinely orders controlled substances from more than one drug supplier.

DEFENDANT, ENTITIES, AND INDIVIDUALS

15. Defendant **Kesha Lynette HARRIS a/k/a Kesha HARRIS Finnister ("KESHA HARRIS")** was the owner, corporate officer, and Pharmacist in Charge ("PIC") licensed by the State of Texas, at CREATIVE CARE PHARMACY ("CREATIVE CARE"), which was located at 6423 Richmond Avenue, Suite #G, Houston, Texas 77057.

16. CREATIVE CARE, a registered retail pharmacy in the State of Texas, maintained a DEA Registration Number. From January 2019 to July 2019, CREATIVE CARE dispensed the second-highest amount of oxycodone out of all of the pharmacies in Houston, and the sixth-highest amount in all of Texas. In 2018, CREATIVE CARE dispensed the third-highest amount of oxycodone in Houston, and the seventh-highest amount in Texas.

17. CO-CONSPIRATOR A ("CCA") was a "crew leader" who brought illegitimate patients to clinics and pharmacies in the Houston area, including CREATIVE CARE, to receive and fill prescriptions for controlled substances outside the course of professional conduct and without a legitimate medical purpose.

COUNT ONE
Conspiracy to Unlawfully Distribute and Dispense Controlled Substances
(21 U.S.C. § 846)

18. Paragraphs 1 through 17 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

19. From in or around October 2016 through in or around July 2019, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas and elsewhere, Defendant **KESHA HARRIS** knowingly and intentionally combined, conspired, confederated, and agreed with CO-CONSPIRATOR A, and others known and unknown to the Grand Jury, to violate Title 21, United States Code, Section 841(a)(1), that is, to knowingly and intentionally unlawfully distribute and dispense, mixtures and substances containing a detectable amount of controlled substances, including oxycodone and hydrocodone, both Schedule II controlled substances, and other controlled substances, outside the usual course of professional practice and not for a legitimate medical purpose.

All in violation of Title 21, United States Code, Section 846.

20. It was a purpose and object of the conspiracy for Defendant **KESHA HARRIS**, CO-CONSPIRATOR A, and others known and unknown to the Grand Jury to unlawfully enrich themselves by, among other things: (a) distributing and dispensing controlled substances outside the usual course of professional practice and not for a legitimate medical purpose; (b) generating large profits from distributing and dispensing those controlled substances; and (c) diverting the proceeds from distributing and dispensing those controlled substances for their personal use and benefit.

Manner and Means of the Conspiracy

The manner and means by which Defendant **KESHA HARRIS** and her co-conspirators sought to accomplish the purpose and object of the conspiracy included, among other things:

21. **KESHA HARRIS** obtained Texas pharmacy licenses from the TSBP and a DEA Registration Number for CREATIVE CARE, where she managed and oversaw operations.

22. **KESHA HARRIS** maintained a Texas Pharmacist License with the TSBP. With these credentials, **KESHA HARRIS** was licensed to distribute and dispense Schedules II through V controlled substances from CREATIVE CARE within the usual course of professional practice and for a legitimate medical purpose.

23. **KESHA HARRIS**, through CREATIVE CARE, distributed and dispensed almost exclusively oxycodone, hydrocodone, and carisoprodol, not for a legitimate medical purpose and outside the usual course of professional conduct.

24. CO-CONSPIRATOR A, a "crew leader," and others paid illegitimate patients to obtain illegitimate prescriptions from medical practitioners, and to have them filled at CREATIVE CARE and other pharmacies. Crew leaders coordinated with a crew of "runners" to pay illegitimate patients to pose as patients, and take or "run" the patients to clinics and pharmacies to illegally obtain prescriptions for controlled substances, and to fill those prescriptions for the purpose of selling them on the illegal-drug market.

25. **KESHA HARRIS** knowingly filled prescriptions for oxycodone, hydrocodone, and carisoprodol that were prescribed outside the usual course of professional conduct and without a legitimate medical purpose for CO-CONSPIRATOR A's illegitimate patients, and for other illegitimate patients trafficked to CREATIVE CARE by "crew leaders" and "runners."

26. The prescriptions **KESHA HARRIS** filled at CREATIVE CARE were almost always for oxycodone 30mg, hydrocodone 10/325mg, and carisoprodol 350mg—the highest dosage strengths of hydrocodone and carisoprodol, and the highest short-acting dosage strength of oxycodone.

27. CO-CONSPIRATOR A often paid **KESHA HARRIS**, through her illegitimate patients, cash-only payments for the controlled substances that were well over market value.

28. Though required under Texas law, **KESHA HARRIS** failed to report thousands of prescriptions she filled at CREATIVE CARE to the Texas PMP.

29. CREATIVE CARE exhibited many, if not all, of the "Red Flags" that the TSBP warned against in its "Red Flags Check List for Pharmacies, YOU MIGHT BE A PILL MILL IF..." checklist.

30. From in or around October 2016 to in or around July 2019, CREATIVE CARE dispensed approximately 1,361,803 dosage units (pills) of controlled substances, including 488,000 dosage units of oxycodone 30mg, approximately 584,000 dosage units of hydrocodone 10/325mg, and approximately 390,000 dosage units of carisoprodol 350mg, most of which were dispensed outside the usual course of professional practice and not for a legitimate medical purpose. CREATIVE CARE made approximately $2.8 million from the sale of these controlled substances.

All in violation of Title 21, United States Code, Sections 846.

COUNT TWO
Maintaining a Drug-Involved Premises and Aiding and Abetting
(21 U.S.C. § 856(a)(1) & 18 U.S.C. § 2))

31. Paragraphs 1 through 17 and 21 through 30 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

32. From in or around October 2016 through in or around July 2019, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas and elsewhere, Defendant **KESHA HARRIS**, aiding and abetting and aided and abetted by others, did unlawfully and knowingly use and maintain a place known as CREATIVE CARE PHARMACY, located at 6423 Richmond Avenue, Suite #G, Houston, Texas 77057, for the purpose of distributing Schedule II controlled substances, including oxycodone and hydrocodone, outside the usual course of professional conduct and without a legitimate medical purpose.

All in violation of 21 U.S.C. § 856(a)(1) & 18 U.S.C. § 2.

NOTICE OF CRIMINAL FORFEITURE
(21 U.S.C. § 853(a))

33. Pursuant to Title 21, United States Code, Section 853(a), the United States of America gives notice to Defendant, **KESHA HARRIS**, that upon conviction of an offense in violation of Title 21, United States Code, Sections 846, or 856, the following is subject to forfeiture:

a. all property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such violation;

b. all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

c. Approximately $2.8 million in cash.

Money Judgment and Substitute Assets

34. The United States will seek the imposition of a money judgment against **KESHA HARRIS** upon conviction.

35. Defendant is notified that in the event that one or more conditions listed in Title 21, United States Code, Section 853(p) exists, the United States will seek to forfeit any other property of the defendant up to the amount of the money judgment.

A TRUE BILL

Original Signature on File

FOREPERSON

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UNITED STATES ATTORNEY

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