IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	1:19-cr-10042-STA
Plaintiff,	)	**Cr. No.:** _____
	)	
vs.	)	**21 U.S.C. § 856(a)(1)**
	)	**21 U.S.C. § 841(a)(1)**
	)	**21 U.S.C. § 841(a)(1) & (b)(1)(C)**
	)	**18 U.S.C. § 2**
THOMAS KELLY BALLARD III, M.D.	)	
	)	**FILED UNDER SEAL**
	)	
Defendant.	)	

I N D I C T M E N T

THE GRAND JURY CHARGES:

At all times material to this indictment:

DEFENDANTS

1. Defendant **THOMAS KELLY BALLARD, III ("BALLARD")** was a Medical Doctor, licensed by the State of Tennessee. **BALLARD** maintained a Drug Enforcement Administration Registration ("DEA") Number. **BALLARD** issued prescriptions for controlled substances, including the Schedule II controlled substances of Oxycodone, Morphine, and Hydrocodone, and the Schedule IV controlled substances Alprazolam, Diazepam, and Clonazepam, at Ballard Clinic-Family Practice in Jackson, Tennessee ("BALLARD CLINIC"), outside the usual scope of professional practice and without a legitimate medical purpose. In conjunction with prescribing controlled substances to some patients, **BALLARD** sought sexual favors. **BALLARD** prescribed opioids to at least one patient causing her death, and to that same patient while she was pregnant.

CONTROLLED SUBSTANCE STATUTES AND CONTROLLING REGULATIONS

2. 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.

3. Medical practitioners, such as physicians and nurse practitioners, who were authorized to prescribe controlled substances by the jurisdiction in which they were licensed to practice medicine, 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); 21 C.F.R. § 1306.03. Upon application by the practitioner, the DEA assigned a unique registration number to each qualifying medical practitioner including physicians and nurse practitioners.

4. The CSA and its implementing regulations set forth which drugs and other substances were 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.

5. A controlled substance assigned to Schedule II meant that the drug had a high potential for abuse, was highly addictive, and that the drug had a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions. Abuse of a Schedule II controlled substance could lead to

severe psychological and/or physical dependence. Pursuant to the CSA and its implementing regulations:

a. Hydrocodone was classified as a Schedule II controlled substance after October 2014, before which time it was classified as a Schedule III controlled substance. It was an opioid pain medication.

b. Oxycodone was classified as a Schedule II controlled substance. Oxycodone was sold generically and under a variety of brand names, including OxyContin®, Roxicodone®, Endocet®, and Percocet. Oxycodone, an opioid pain medication, is about fifty percent stronger than Morphine.

c. Hydrocodone, Morphine, and Oxycodone were among the Schedule II opioid controlled substances that had the highest potential for abuse and associated risk of fatal overdose.

6. A controlled substance assigned to Schedule IV meant that the drug or other substance had a lower potential for abuse than Schedule II drugs or other substances, the drug or other substance had a currently accepted medical use in the United States, and abuse of the drug or other substances may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in the higher Schedules. Pursuant to the CSA and its implementing regulations:

a. Alprazolam, a benzodiazepine, was classified as a Schedule IV controlled substance. Alprazolam, sometimes prescribed under brand name Xanax, was a medication used to treat anxiety.

b. Clonazepam, a benzodiazepine, was classified as a Schedule IV controlled substance. Clonazepam, sometimes prescribed under brand name Klonopin, was a medication used to treat anxiety and seizures.

c. Diazepam, a benzodiazepine, was classified as a Schedule IV controlled substance. Diazepam, sometimes prescribed under brand name Valium, was a medication used to treat anxiety and seizures.

7. 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."

8. Chapter 21 of the Code of Federal Regulations, Section 1306.04, further directed that "[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. It was well known that the combination of high-dose opioids and benzodiazepines (*e.g.*, Alprazolam, Diazepam, and Clonazepam) in any dose significantly increased the risk of patient intoxication and overdose. For a treating physician to prescribe this combination of high-dose opioids and benzodiazepines for a legitimate medical purpose, the physician needed to determine, at a minimum, that the benefits of the drugs outweighed the risk(s) to the patient's life.

10. On March 16, 2016, the Centers for Disease Control and Prevention ("CDC") issued CDC Guidelines for Prescribing Opioids for Chronic Pain. In that guidance, the CDC warned that medical professionals should avoid prescribing opioids and benzodiazepines (e.g. Alprazolam, Diazepam, and Lorazepam) concurrently whenever possible because of the risk of fatal overdose.

11. Prescribing and issuing these two medications around the same time quadruples the patient's risk of overdose and death from the prescribed drugs. Moreover, there is a significant diversion risk of prescribing or issuing these drugs around the same time. A benzodiazepine served as a "potentiator" for the opioid's euphoric effect, which means that it increases the "high" a user may obtain from opioid and is therefore often sought for this non-legitimate medical purpose.

12. On August 31, 2016, the U.S. Food and Drug Administration ("FDA") issued a "Black Box" Warning, its strongest warning, to the drug labeling of prescription opioid pain medicines and benzodiazepines. The FDA specifically warned that combined use of opioids and benzodiazepines depresses the central nervous system and results in serious side effects, such as slowed or difficult breathing and death. The FDA further warned health care professionals to limit prescribing opioids with benzodiazepines and cautioned that such medications should only be prescribed together when alternative treatment options are inadequate.

13. Urine drug screens were relied upon in the pain-management industry as a means of identifying a patient's non-compliance with the patient's treatment plan. Urine drug screens were used to identify abuse of illicit and controlled substances not prescribed to a patient, and to identify a patient's failure to take drugs prescribed for the

patient's treatment of pain.

14. Tennessee's controlled substance monitoring program ("CSMD") was a means of detecting a pain management patient's non-compliance with the patient's treatment plan. A CSMD report contained prescription data for all controlled substances dispensed by pharmacies in the State of Tennessee. Pharmacies were required to report 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.

BALLARD's Illegal Distribution and Dispensing of Controlled Substances

15. **BALLARD** often used his status as a Medical Doctor, his DEA Registration Number, and BALLARD CLINIC, to knowingly and intentionally prescribe various opioids, including; Oxycodone, Morphine, and Hydrocodone; in addition to various benzodiazepines, including Alprazolam, Diazepam, and Clonazepam; and other controlled substances, outside the course of professional practice and not for a legitimate medical purpose.

16. **BALLARD** often based his medical decisions regarding the prescribing of controlled substances on his own physical gratification rather than on the patient's medical necessity.

17. **BALLARD** often used his power to prescribe controlled substances to convince purported patients to submit to medically unnecessary procedures, including pap smears.

18. **BALLARD** often used his power to prescribe controlled substances to convince purported patients to allow him to kiss, hug, grope, or otherwise inappropriately touch them.

19. **BALLARD** often attempted to have sexual relations with female patients during patient office visits. **BALLARD** also often used his power to prescribe controlled substances to convince, and attempt to convince, patients to have sexual relations with him.

20. **BALLARD** often:

a. Prescribed the dangerous drug combination known as the "Holy Trinity," comprised of opioids (typically Hydrocodone, Oxycodone, or Morphine), benzodiazepines (typically Alprazolam, Diazepam, or Lorazepam), and the muscle relaxer Carisoprodol;

b. Prescribed dangerous combinations of opioids and benzodiazepines;

c. Failed to monitor patients for addiction, despite warning signs and evidence of addiction;

d. Failed to monitor patients for diversion of the prescribed drugs into the illicit drug market, despite warning signs and evidence of diversion;

e. Ignored drug screens showing patients were taking illicit drugs or were not taking the controlled substances prescribed to them, and therefore, were likely abusing or diverting the drugs to other users;

f. Failed to corroborate patients' reports of pain through x-rays, MRI's, and other diagnostic tools;

g. Failed to properly examine patients;

h. Failed to properly diagnose patients;

i. Failed to provide treatment plans for patients; and

j. Failed to recommend alternative forms, or modalities, of treatment for pain;

k. Failed to document the medical need for prescribing patients controlled substances.

COUNT ONE

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

21. The allegations contained in paragraphs 1 through 20 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

22. From in or around 2009 and continuing through in or around 2018, in the Eastern Division of the Western District of Tennessee, the Defendant, **THOMAS KELLY BALLARD, III**, aiding and abetting and aided and abetted by others, did unlawfully and knowingly use and maintain a place known as Ballard Clinic-Family Medicine, located at 418 East Baltimore Street, Jackson, Tennessee 38301, permanently and temporarily, for the purpose of distributing Schedule II controlled substances outside the usual course of professional practice and without a legitimate medical purpose in violation of Title 21, United States Code, Section 856(a)(1) and Title 18, United States Code, Section 2.

COUNTS TWO - SEVENTEEN
Unlawfully Distributing and Dispensing Controlled Substances and Aiding and Abetting
(21 U.S.C. § 841 & 18 U.S.C. § 2)

23. Paragraphs 1 through 20 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

24. During the dates specified below, in the Eastern Division of the Western District of Tennessee, Defendant **THOMAS KELLY BALLARD, III**, aiding and abetting and aided and abetted by others known and unknown to the Grand Jury, did intentionally and knowingly distribute and dispense, not for a legitimate medical purpose and outside the scope of professional practice, the Schedule II controlled substances as alleged in the following counts:

Count	On or About	Controlled Substances	"Patient"
2	April 17, 2014	Oxycodone	LM
3	May 15, 2014	Oxycodone	LM
4	June 10, 2014	Oxycodone	LM
5	July 8, 2014	Oxycodone	LM
6	August 6, 2014	Oxycodone	LM
7	September 3, 2014	Oxycodone	LM
8	September 29, 2014	Oxycodone	LM
9	October 24, 2014	Oxycodone	LM

10	October 3, 2014	Hydrocodone	AL
11	December 2, 2014	Hydrocodone	AL
12	January 2, 2015	Hydrocodone	AL
13	February 2, 2015	Hydrocodone	AL
14	March 2, 2015	Hydrocodone	AL
15	March 31, 2015	Hydrocodone	AL
16	April 29, 2015	Hydrocodone	AL
17	May 27, 2015	Hydrocodone	AL

COUNT EIGHTEEN
Distribution of a Controlled Substance Resulting In Death or Serious Bodily Injury (21 U.S.C. § 841(a)(1) & (b)(1)(C))

25. Paragraphs 1 through 20 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

26. On or about May 28, 2015, in the Eastern Division of the Western District of Tennessee, Defendant **THOMAS KELLY BALLARD, III**, aiding and abetting and aided and abetted by others known and unknown to the Grand Jury, did intentionally and knowingly distribute and dispense, not for a legitimate medical purpose and outside the scope of professional practice, Hydrocodone, a Schedule II controlled substance, to A.L., and death and serious bodily injury resulted from the use of the Hydrocodone that

THOMAS KELLY BALLARD, III, distributed or dispensed.

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

27. The allegations contained in Counts 1 through 18 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 21, United States Code, Section 853.

28. Pursuant to Title 21, United States Code, Section 853, the United States gives notice to defendant **BALLARD** that upon conviction of an offense in violation of Title 21, United States Code, Section 841, the following property shall be subject to forfeiture:

a. All property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such offense; and

b. All property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the offense.

29. The defendant **BALLARD** is notified that upon conviction, a money judgment may be imposed equal to the total value of the property subject to forfeiture.

30. 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 defendants up to the total value of the property subject to forfeiture.

A TRUE BILL:

_____
F O R E P E R S O N

DATED: _____

_____
JOSEPH BEEMSTERBOER
CHIEF, FRAUD SECTION, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE