UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	**Criminal No. 4:18-cr-513**
	§	
DR. OSCAR LIGHTNER, and	§	
ANDRES MARTINEZ, JR.,	§	
	§	
	§	
Defendants.	§	

SUPERSEDING INDICTMENT

The Grand Jury charges:

General Allegations

At all times material to this Superseding 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 knowingly or intentionally . . . to 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. "Schedule II" controlled substances were drugs or other substances that: (1) had a high potential for abuse; (2) had a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and (3) if abused, could lead to severe

psychological or physical dependence. 21 U.S.C. § 812(b)(2). Under the CSA and its implementing regulations, hydrocodone was classified as a Schedule II controlled substance. 21 C.F.R. § 1308.12(b). Hydrocodone was an opioid and was included in medications known by the brand names Vicodin, Norco, and Lortab.

4. "Schedule IV" controlled substances were drugs or other substances that: (1) had a lower potential for abuse than Schedule II drugs or other substances; (2) had a currently accepted medical use in the United States; and (3) if abused, could lead to limited physical dependence or psychological dependence relative to the drugs or other substances in the higher Schedules. 21 U.S.C. § 812(b)(4). Pursuant to the CSA and its implementing regulations:

a. Carisoprodol was classified as a Schedule IV controlled substance. 21 C.F.R. § 1308.14(c). Carisoprodol, sometimes prescribed under the brand name Soma, was a purported muscle relaxant. The FDA recommended carisoprodol be prescribed only for acute treatment for two to three weeks at a time.

b. Alprazolam, a benzodiazepine, was classified as a Schedule IV controlled substance. 21 C.F.R. § 1308.14(c). Alprazolam, sometimes prescribed under brand name Xanax, was a medication used to treat anxiety.

5. Carisoprodol and/or benzodiazepines (including alprazolam), when ingested with an opioid, served as a "potentiator" for the opioid's euphoric effect, in that it increased the "high" a user obtained from using the opioid. As such, carisoprodol and/or benzodiazepines (including alprazolam) were often sought after for this non-legitimate medical purpose and presented a significant risk of diversion.

6. It was well known that the combination of high strength opioids, including 10 mg hydrocodone (the highest available dose) and carisoprodol and/or benzodiazepines (including alprazolam), significantly increased the risk of patient intoxication and overdose. For a treating physician to prescribe this combination of high-strength opioids and carisoprodol and/or benzodiazepines (including alprazolam) 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.

7. On March 16, 2016, the Centers for Disease Control and Prevention (CDC) issued guidelines for Prescribing Opioids for Chronic Pain. In those guidelines, the CDC warned that medical professionals should avoid prescribing opioids and benzodiazepines concurrently whenever possible because of the risk of fatal overdose.

8. 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.

9. Practitioners, such as physicians and pharmacists, who were authorized to prescribe, distribute, and dispense controlled substances by the jurisdiction in which they were licensed to practice, were authorized under the CSA to prescribe, distribute, and dispense 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 U.S. Drug Enforcement Administration (DEA) assigned a unique registration number to each qualifying physician, pharmacist, or pharmacy.

10. Under 21 C.F.R. § 1306.04(a), "a prescription for a controlled substance to be effective 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 [was] upon the prescribing practitioner, but a corresponding responsibility rest[ed] with the pharmacist who fill[ed] the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research [was] not a prescription within the meaning and intent of [the CSA] and the person [who] knowingly fill[ed] such a purported prescription, as well as the person [who] issu[ed] it, [was] subject to the penalties provided for violations of the provisions of law relating to controlled substances."

11. All prescriptions for controlled substances were required to "be dated as of, and signed on, the day when issued and … 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).

12. A pain management clinic could not operate in Texas without obtaining a certificate from the Texas Medical Board. The Texas Medical Board defined a pain management clinic as a

publicly or privately owned facility for which a majority of patients were issued, on a monthly basis, a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone. A person was exempt from the certification requirement if the clinic was owned or operated by a physician who treats patients within the physician's area of specialty and who personally uses other forms of treatment, including surgery, with the issuance of a prescription for the majority of the patients.

13. Illegitimate pain-management clinics or "pill mills" often obtain their patients through what were often called "runners," "crew leaders," or "facilitators" (hereinafter referred to as "runners"). Runners many times recruited individuals to pose as patients and visit illegitimate pain-management clinics in order to obtain prescriptions for oxycodone, hydrocodone, carisoprodol, benzodiazepines, and other controlled substance prescriptions. Runners then took the prescriptions from the people posing as patients, went to a pharmacy to have the controlled substances dispensed, and then sold the controlled substances on the illegal drug market. The people that the runners recruited were often homeless, and runners often compensated the people posing as patients by paying them cash and/or by offering them free lunches and other benefits.

Clinic

14. Jomori Institute Incorporated, dba Jomori Health and Wellness (JOMORI), was a medical clinic purporting to provide pain management. JOMORI was formed in July 2012, located in Houston, Texas, in the Southern District of Texas, and was not certified with the Texas Medical Board as a pain management clinic.

Defendants

15. Defendant **DR. OSCAR LIGHTNER** was a Doctor of Medicine, licensed by the State of Texas, and the founder, President, and Director of JOMORI. **DR. OSCAR LIGHTNER** maintained a DEA Registration Number and issued prescriptions for controlled substances at JOMORI, outside the usual course of professional practice and without a legitimate medical purpose, in exchange for cash.

16. Defendant **ANDRES MARTINEZ, JR.** was the manager and operator of JOMORI and was not a medical professional. **ANDRES MARTINEZ, JR.** oversaw the recruiting of people purporting to be patients to JOMORI so that **DR. OSCAR LIGHTNER** could prescribe hydrocodone, carisoprodol, benzodiazepines (including alprazolam) and other controlled substances in exchange for cash.

COUNT 1
Conspiracy to Distribute and Dispense Controlled Substances
(21 U.S.C. § 846)

17. Paragraphs 1 through 16 of this Superseding Indictment are realleged and incorporated by reference as if fully set forth herein.

18. From in or around May 2017, and continuing through in or around August 2018, in the Houston Division of the Southern District of Texas, and elsewhere, the Defendants,

DR. OSCAR LIGHTNER and
ANDRES MARTINEZ, JR.,

did knowingly and intentionally combine, conspire, confederate, and agree with each other and with 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 distribute and dispense Schedule II controlled

substances, including hydrocodone, and Schedule IV controlled substances, including carisoprodol and benzodiazepines (such as alprazolam), not for a legitimate medical purpose and outside the usual course of professional practice.

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

Purpose of the Drug Conspiracy

19. It was the purpose and object of the conspiracy for Defendants to unlawfully enrich themselves by, among other things: (a) prescribing controlled substances without a legitimate medical purpose and outside the usual course of professional practice; (b) generating large profits from those prescriptions; and (c) diverting the proceeds from those controlled substance prescriptions for the personal use and benefit of Defendants and their coconspirators known and unknown to the Grand Jury.

Manner and Means of the Conspiracy

The manner and means by which the Defendants sought to accomplish the purpose and object of the conspiracy included, among other things:

20. **DR. OSCAR LIGHTNER** used his status as a licensed physician, his DEA Registration Number, and his medical practice JOMORI, to knowingly and intentionally prescribe hydrocodone, a Schedule II controlled substance, and carisoprodol and benzodiazepines (including alprazolam), Schedule IV controlled substances, outside the usual course of professional practice and not for a legitimate medical purpose.

21. **DR. OSCAR LIGHTNER** was required under Texas law to register JOMORI as a pain management clinic with the Texas Medical Board, but did not.

22. **DR. OSCAR LIGHTNER** and **ANDRES MARTINEZ, JR.** hired security guards to work at JOMORI.

23. **DR. OSCAR LIGHTNER** often prescribed to his patients a combination of hydrocodone and carisoprodol and other times prescribed a combination of hydrocodone with benzodiazepines (including alprazolam). **DR. OSCAR LIGHTNER** ignored the dangers inherent in prescribing this combination and prescribed this combination to a large majority of individuals recruited to JOMORI, outside the usual course of professional practice, and without a legitimate medical purpose.

24. **ANDRES MARTINEZ, JR.** recruited people purporting to be patients from runners and others to visit JOMORI. **ANDRES MARTINEZ, JR.** and other coconspirators, known and unknown to the grand jury, accepted cash from runners, and in exchange provided the runners with prescriptions from **DR. OSCAR LIGHTNER** for hydrocodone, carisoprodol, benzodiazepines (including alprazolam), and other drugs, purportedly ordered for the people that the runners brought in to pose as patients, outside the usual course of professional practice and not for a legitimate medical purpose.

25. The runners often brought people, posing as patients, in groups to JOMORI. Often the runners, not the people posing as patients, would pay **ANDRES MARTINEZ, JR.** or other coconspirators, known and unknown to the grand jury, for purported doctor visits at JOMORI. The runners would often transport the people posing as patients to local pharmacies to fill the prescriptions. After the pharmacies dispensed the drugs, the runners often sold the drugs on the illegal drug market.

26. **ANDRES MARTINEZ, JR.** often accepted money from runners to move the people that the runners brought in to pose as patients to the front of the line for purposes of seeing

DR. OSCAR LIGHTNER or another purported medical professional under **DR. OSCAR LIGHTNER's** purported supervision.

27. **ANDRES MARTINEZ, JR.** and other coconspirators, known and unknown to the grand jury, also accepted cash directly from people posing as patients, in exchange for prescriptions from **DR. OSCAR LIGHTNER** for hydrocodone, carisoprodol, benzodiazepines (including alprazolam) and other drugs, outside the course of professional practice and not for a legitimate medical purpose.

28. **DR. OSCAR LIGHTNER** did knowingly and intentionally prescribe hydrocodone, carisoprodol, benzodiazepines (including alprazolam), and other drugs without consulting the patient's primary care physician or other doctors treating the patient, without obtaining medical records from previous providers, without conducting an adequate examination and evaluation of the patient, without exhausting evidence-based treatments, without reviewing the appropriate medical records, and without taking other actions required by a doctor's minimum standard of care in the area of pain management.

29. From in or around May 2017, and continuing through in or around August 2018, **DR. OSCAR LIGHTNER, ANDRES MARTINEZ, JR.**, and their coconspirators, known and unknown to the grand jury, received approximately $1.46 million in cash as a result of **DR. OSCAR LIGHTNER's** illegitimate prescriptions for hydrocodone, carisoprodol, benzodiazepines (including alprazolam), and other controlled substances.

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

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

30. Paragraphs 1 through 16 and 19 through 29 of this Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.

31. On or about the dates specified below, in the Houston Division of the Southern District of Texas, the Defendants,

DR. OSCAR LIGHTNER and
ANDRES MARTINEZ, JR.,

for the counts outlined below, aiding and abetting and aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and dispense, not for a legitimate medical purpose and outside the usual course of professional practice, the controlled substances alleged below:

Count	Defendant	On or about date	Controlled Substances	"Patient"
2	**LIGHTNER**	October 12, 2017	Hydrocodone	D.R.
3	**LIGHTNER and MARTINEZ**	May 29, 2018	Hydrocodone	M.E.

All in violation of Title 21, United States Code, Section 841(a), (b)(1)(C), (b)(2) & Title 18, United States Code, Section 2.

Notice of Criminal Forfeiture

32. Pursuant to Title 21, United States Code, Section 853, the United States gives notice to the Defendants **DR. OSCAR LIGHTNER and ANDRES MARTINEZ, JR.** that, in the event of conviction of an offense in violation of Title 21, United States Code, Sections 841 or 846, 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; and

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

Money Judgment

33. The Defendants are notified that in the event of conviction, a money judgment may be imposed equal to the total value of the property subject to forfeiture.

Substitute Assets

34. 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

Original Signature on File
FOREPERSON

JENNIFER B. LOWERY
ACTING UNITED STATES ATTORNEY

DANIEL KAHN
ACTING CHIEF, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

ALLAN MEDINA
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