UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	Criminal No. 19 CR 606
	§	UNDER SEAL
BRANDY LADAWN FEARS and	§	
RICKY WAYNE MOTEN,	§	
Defendants.	§	

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, including Roxicodone, 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.

ENTITIES AND DEFENDANTS

15. **PHYSICIAN A** was a Medical Doctor, and was licensed to practice medicine in the State of Texas since in or around December 2017. **PHYSICIAN A** prescribed large volumes of controlled substances—primarily oxycodone 30mg, hydrocodone 10/325mg, and carisoprodol 350mg—outside the scope of professional practice and with no legitimate medical purpose.

16. **PERSON A** controlled two illegal (unregistered) pain-management clinics with **PHYSICIAN A**. **PERSON A** also recruited patient-runners and purported patients to buy controlled substances for illegitimate prescriptions issued by **PHYSICIAN A**.

17. **BRANDY LADAWN FEARS** ("**FEARS**"), a resident of Harris County, Texas owned or controlled Meds R Us, LLC, TX Pharmacy License # 32342, located at 2601 Cartwright Rd. Ste. F, Missouri City, Fort Bend County, TX 77459. **FEARS** is also registered as a pharmacy technician with the Texas State Board of Pharmacy ("TSBP"). **FEARS** received a license for Meds R Us from TSBP in November 2018.

18. **PERSON B**, a resident of Harris County, Texas was a licensed pharmacist, and the pharmacist-in-charge ("PIC") at Meds R Us, beginning on or about May 2019.

19. **RICKY WAYNE MOTEN** ("**MOTEN**"), a resident of Harris County, Texas, was the head of a drug organization in Houston, Texas. **MOTEN** coordinated with **PERSON A**, **FEARS**, and other Houston-area clinics, pharmacies, crew leaders, and runners, the purchase and illegal diversion of illegitimate prescriptions issued by Houston-area doctors, including **PHYSICIAN A**, and filled at Houston-area pharmacies, including Meds R Us.

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

20. Paragraphs 1 through 19 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

21. From in or around November 2018 through in or around August 2019, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas and elsewhere, Defendants

BRANDY LADAWN FEARS and
RICKY MOTEN

knowingly and intentionally combined, conspired, confederated, and agreed together and with each other, with **PERSON A**, **PERSON B**, and **PHYSICIAN A**, 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 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.

Purpose of the Conspiracy

22. It was a purpose and object of the conspiracy for the Defendants, 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 the Defendants sought to accomplish the purpose and object of the conspiracy included, among other things:

23. **PHYSICIAN A** used his status as a licensed physician, his DEA Registration Number, and his medical practices to knowingly prescribe controlled substances, including oxycodone, hydrocodone, carisoprodol, outside the usual course of professional practice and not for a legitimate medical purpose.

24. **PHYSICIAN A**'s prescribing habits demonstrated a gross lack of individualized care for his purported patients: the vast majority of **PHYSICIAN A**'s prescriptions were for oxycodone 30mg, hydrocodone 10/325mg, and carisoprodol 350mg, the most potent dosage strengths of these drugs, and were for same or substantially similar dosage units (pills)—105 to 120 pills of oxycodone or hydrocodone, and 90 pills of carisoprodol. This highly addictive and dangerous combination of oxycodone and carisoprodol or hydrocodone and carisoprodol, two

components of the highly diverted "Houston cocktail," was prescribed outside the usual course of professional practice and with no legitimate medical purpose.

25. **PERSON A** obtained purported patients—customers—from crew leaders, runners, and others, including **MOTEN**. These purported patients would sometimes visit **PHYSICIAN A**'s clinics for a perfunctory evaluation by a non-physician; other times, **PERSON A** would allow crew leaders, including **MOTEN**, to provide nothing more than a copy of the purported patients' state identification cards in order to receive a prescription issued under **PHYSICIAN A**'s medical license and DEA number.

26. **PERSON A** and **PHYSICIAN A**, along with their clinic-employee co-conspirators, accepted cash only—ranging from approximately $300 for hydrocodone to approximately $500 for oxycodone—from crew leader and runners, in exchange for illegal prescriptions for oxycodone, hydrocodone, carisoprodol, and other drugs that **PHYSICIAN A** purportedly prescribed to individuals posing as patients at the clinics.

27. After a paper or electronic prescription was purportedly issued by **PHYSICIAN A**, the crew leaders and runners, including **MOTEN**, would fill those illegitimate prescriptions at Houston-area pharmacies participating in the conspiracy, including **FEARS'** Meds R Us pharmacy. The pharmacies, in turn, relied on licensed pharmacists like **PERSON B**, to dispense the drugs. The pharmacy operators would deal directly with the crew leaders and runners, frequently dispensing drugs to them without ever seeing the purported patients in whose names the prescriptions were written.

28. In this and other ways, **FEARS** and the other pharmacy co-conspirators, including **PERSON B**, used their statuses as a licensed pharmacies and pharmacists, and their DEA Registration Numbers, to knowingly dispense controlled substances, including oxycodone,

hydrocodone, and carisoprodol, outside the usual course of professional practice and not for a legitimate medical purpose. In return, they were rewarded with cash for the drugs in amounts well over the market value of legitimate prescriptions for the drugs.

29. During the brief period of Meds R Us's dispensing history known to the Grand Jury at the time of this Indictment—less than five months, from February 13, 2019 to July 3, 2019—Meds R Us reported to the state monitoring agency that it distributed more than 20,000 units of oxycodone, 25,000 units of hydrocodone, and 18,000 units of carisoprodol, with these "big three" comprising 94 percent of all controlled substances dispensed. With the exception of one prescription, the remaining 6 percent of the controlled drugs Meds R Us dispensed during that period was comprised of Xanax and cough syrup with codeine.

30. The same data reflects that when Meds R Us dispensed these dangerous drugs and cocktails thereof, the strength and quantity of these drugs were virtually uniform, reflecting an utter lack of the individualized care required for these types of drugs the legitimate medical world.

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

COUNTS 2-4
Unlawfully Distributing and Dispensing Controlled Substances and Aiding and Abetting (21 U.S.C. § 841 & 18 U.S.C. § 2)

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

32. On or about the dates specified below, in the Houston Division and elsewhere in the Southern District of Texas, the Defendants named below, aiding and abetting and aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally unlawfully distribute and dispense, outside the usual course of professional practice and not for a legitimate medical purpose, the controlled substances alleged below:

Count	Defendant(s)	Controlled Substance	Prescriber	On Or About Date	"Patient" Initials
2	**RICKY WAYNE MOTEN** **BRANDY LADAWN FEARS**	Oxycodone 30mg	**PHYSICIAN A**	02/27/19	R.M.
3	**RICKY WAYNE MOTEN** **BRANDY LADAWN FEARS**	Oxycodone 30mg	**PHYSICIAN A**	02/27/19	W.D.
4	**RICKY WAYNE MOTEN** **BRANDY LADAWN FEARS**	Oxycodone 30mg	**PHYSICIAN A**	03/12/18	D.M.

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
(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 Defendants, that upon conviction of an offense in violation of Title 21, United States Code, Section 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;

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

(CONTINUED)

Money Judgment and Substitute Assets

34. The United States will seek the imposition of a money judgment against **MOTEN** and **FEARS** upon conviction.

35. Defendants are 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 Defendants up to the amount of the money judgment as to each Defendant.

A TRUE BILL

Original Signature on File

FOREPERSON

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