

HOPPER

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

UNITED STATES OF AMERICA,)	FILED UNDER SEAL
)	
Plaintiff,)	Cr. No.: <u>1:21-cr-10117-STA</u>
)	
vs.)	
)	18 U.S.C. § 2
)	18 U.S.C. § 1347
)	21 U.S.C. § 841
KELLY MCCALLUM)	21 U.S.C. § 856
a/k/a Kelly Murphy,)	
)	
Defendant.)	<u>Notice of Forfeiture</u>

INDICTMENT

THE GRAND JURY CHARGES:

At all times material to this Indictment:

1. Defendant **KELLY MCCALLUM** (“**MCCALLUM**”) was an Advanced Practice Registered Nurse (“APRN”), licensed by the State of Tennessee. **MCCALLUM** owned and operated Convenient Care Clinic at 2490 Parr Avenue, Suite #3, Dyersburg, Tennessee (“Convenient Care”).

2. **MCCALLUM** maintained a Drug Enforcement Administration (“DEA”) registration number, which allowed her to prescribe controlled substances, issued for a legitimate medical purpose, in the usual course of professional practice.

3. **MCCALLUM** issued prescriptions for controlled substances, including for Schedule II controlled substances, such as, Hydrocodone, Oxycodone, Adderall, and others, as well as for Schedule IV controlled substances, such as, Alprazolam,

Diazepam, and others, at Convenient Care, and elsewhere in the Western District of Tennessee, outside the usual course of professional practice, without a legitimate medical purpose.

CONTROLLED SUBSTANCE STATUTES AND CONTROLLING REGULATIONS

4. 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.

5. 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.

6. 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.

7. 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.

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 Percacet. Oxycodone, an opioid pain medication, is about fifty percent stronger than Morphine.

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

d. Adderall, a brand name of amphetamine/dextroamphetamine, was a Schedule II controlled substance, primarily used to treat Attention Deficit Hyperactivity Disorder (ADHD) and narcolepsy.

8. 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. 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, muscle spasms, and seizures.

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

9. 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.”

10. 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.”

11. It was well known that the combination of high-dose opioids and benzodiazepines (e.g., Alprazolam) in any dose had a significant impact upon the risk of patient intoxication and overdose. For a treating nurse practitioner to prescribe this combination of high-dose opioids and benzodiazepines for a legitimate medical

purpose, the nurse practitioner needed to determine, at a minimum, that the benefits of the drugs outweighed the risk(s) to the patient's life.

12. 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 and Diazepam) concurrently whenever possible because of the risk of potentially fatal overdose.

13. Prescribing and issuing these two medications around the same time quadrupled the patient's risk of overdose and death from the prescribed drugs. Moreover, there was a significant risk of diversion when prescribing or issuing these drugs around the same time. Furthermore, a benzodiazepine served as a "potentiator" for the opioid's euphoric effect by increasing the "high" a user may obtain from opioid and was therefore often sought for this non-legitimate medical purpose.

14. 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 were inadequate.

15. 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.

16. Tennessee's controlled substance monitoring database 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 prescriber'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.

MEDICAID AND MEDICARE

17. The Medicare Program ("Medicare"), was a federal healthcare program providing benefits to individuals who were over the age of 65 or disabled. Medicare was administered by the United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services ("CMS"). Medicare was a "health care benefit program," as defined by Title 18, United States Code Section 24(b).

18. The Tennessee Medicaid Program ("Medicaid" or "TennCare") was also a "health care benefit program," as defined by Title 18, United States Code, Section 24(b), that provided benefits to Tennessee residents who met certain eligibility requirements, including income requirements. Medicaid was a jointly-funded federal-state program.

19. Individuals who were eligible to receive services under Medicare and Medicaid were called "beneficiaries" and "members," respectively. Medical service

providers, including clinics, physicians, nurse practitioners, and pharmacies (“service providers”), meeting certain criteria, could provide medical services and items to beneficiaries and members, and subsequently submit claims, either electronically or in hardcopy, to Medicare and Medicaid, through fiscal intermediaries, seeking reimbursement for the cost of services and items provided.

20. The American Medical Association assigned and published numeric codes, known as Current Procedural Terminology (CPT). CPT codes were a systematic listing of procedures and services performed by health care providers. The procedures and services represented by the codes were health care benefits, items, and services within the meaning of Title 18, United States Code, Section 24(b). CPT codes included codes for diagnostic testing and evaluation, consultations, various surgical procedures, and other services, based on complexity, severity, and the average time required to perform each service.

21. Health care providers and health care benefit programs used CPT codes to describe and evaluate the services claimed, and to decide whether to issue or deny payment. Each health care benefit program established a fee reimbursement for each procedure described by a CPT code. For example, typical physician office visits for established patients were billed by physicians to health benefit programs using CPT codes 99211, 99212, 99213, 99214, and 99215. These codes denoted varying levels of services provided, with 99211 being a basic office visit with minimal presenting problems typically lasting about five minutes, and 99215 being an office visit with presenting problems of a moderate to severe nature typically lasting about 40 minutes.

22. CPT codes 99212 through 99215 were required to be performed by a

physician or qualified health care professional and billed under the same name of the physician or qualified health care professional who provided the services.

MCCALLUM'S PRACTICE AT CONVENIENT CARE

23. Over an approximately four-year period, from January 2017 until early 2021, **MCCALLUM** issued more than 50,000 prescriptions for controlled substances. Through these prescriptions, **MCCALLUM** distributed more than two million pills containing Hydrocodone or Oxycodone, and more than 900,000 pills containing benzodiazepines.

24. **MCCALLUM** provided prescriptions for controlled substances to individuals with whom she had close personal relationships, including individuals with whom she had sexual relationships.

25. **MCCALLUM** provided prescriptions for opioids to patients without regularly conducting urine drug screens.

26. **MCCALLUM** prescribed dangerous combinations of controlled substances to her patients, including combinations of opioids and benzodiazepines, and opioids and other potentiators such as Gabapentin. **MCCALLUM** also prescribed the "Holy Trinity," a term used to describe the prescription of a dangerous combination of drugs comprised of a benzodiazepine (such as Alprazolam or Diazepam), an opioid (such as Oxycodone or Hydrocodone), and a muscle relaxant (such as Carisoprodol).

27. When **MCCALLUM** was out of the office, she left pre-signed prescriptions at Convenient Care for staff to distribute controlled substances in her absence. **MCCALLUM** referred to the patient visits conducted in her absence as "nursing visits." The CSMD shows hundreds of prescriptions for opioids dispensed by **MCCALLUM** over

the course of several dates that she was out of the office.

28. **MCCALLUM**, as the owner and operator of Convenient Care, entered into agreements with Medicare, and other insurance plans, to provide services to beneficiaries and members at Convenient Care. **MCCALLUM** enrolled Convenient Care in the Medicare Program in January 2013. As part of the application process, **MCCALLUM** certified that her signature on the application legally and financially bound Convenient Care to the laws, regulations, and program instructions of Medicare.

29. **MCCALLUM** was the only provider at Convenient Care who could prescribe controlled substances, except for an approximately 28-day period in March-April 2019 when she employed another APRN. Outside of that 28-day period, **MCCALLUM** was also the only qualified health professional who could perform patient visits that were appropriately billed under CPT codes 99212 through 99215.

30. **MCCALLUM** submitted, or caused to be submitted, claims to Medicare and Medicaid under her name, for services she did not provide, and for dates that she was absent from Convenient Care.

COUNT 1
Maintaining a Drug-Involved Premises and Aiding and Abetting
(21 U.S.C. § 856, 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. From in or around January 2017, and continuing through in or around April 2021, within the Western District of Tennessee, and elsewhere, the defendant,

KELLY MCCALLUM,

aiding and abetting and aided and abetted by others known and unknown to the Grand

Jury, did knowingly open, lease, rent, use, and temporarily and permanently maintain a place, that is, Convenient Care in Dyersburg, Tennessee, for the purpose of distributing Schedule II and Schedule IV controlled substances outside the usual course of professional practice, not for 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 2-12
Unlawfully Distributing and Dispensing Controlled Substances and Aiding and Abetting
(21 U.S.C. § 841, 18 U.S.C. § 2)

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

34. During the dates specified below, in the Western District of Tennessee, and elsewhere, the defendant,

KELLY MCCALLUM,

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 usual course of professional practice, the controlled substances alleged in the following counts:

COUNT	ON OR ABOUT	PATIENT	CONTROLLED SUBSTANCE
2	7/26/2017	A.H.	Hydrocodone
3	10/10/2017	G.H.	Hydrocodone
4	11/8/2019	D.J.	Oxycodone
5	10/5/2020	G.H.	Oxycodone
6	10/28/2020	J.S.	Adderall
7	11/3/2020	D.J.	Oxycodone
8	11/24/2020	V.J.	Hydrocodone
9	11/24/2020	V.J.	Alprazolam
10	1/18/2021	V.J.	Hydrocodone
11	1/18/2021	V.J.	Alprazolam

12	1/29/2021	A.H.	Oxycodone
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Each in violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C), (b)(2), and Title 18, United States Code, Section 2.

COUNTS 13-18
Health Care Fraud
(18 U.S.C. § 1347, 18 U.S.C. § 2)

35. Paragraphs 1 through 22 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

36. Beginning in or around January 2019, and continuing through in or around April 2021, in the Western District of Tennessee, and elsewhere, the defendant,

KELLY MCCALLUM,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare and Medicaid, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, Medicare and Medicaid, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE SCHEME AND ARTIFICE

37. It was the purpose of the scheme and artifice for **MCCALLUM** and others to unlawfully enrich themselves and others by, among other things, causing false or fraudulent claims to be submitted for: (a) medical services that were either not provided

or were provided by individuals who were not qualified to provide such services; and (b) concealing the unlawful distribution of controlled substances on occasions when **MCCALLUM** was not present at the clinic.

THE SCHEME AND ARTIFICE

38. Paragraphs 23 through 30 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE

39. On or about the dates specified below, and additional dates known and unknown to the Grand Jury, in the Western District of Tennessee, and elsewhere, **MCCALLUM**, aided and abetted by others, and aiding and abetting others known and unknown to the Grand Jury, submitted and caused to be submitted the following false and fraudulent claims, among others, to Medicare and Medicaid, for office visits and medical services, on dates that **MCCALLUM** was not in the office to perform those health care services, in an attempt to execute, and in execution of the scheme to defraud, with each execution set forth below forming a separate count. Many of the same beneficiaries who were reportedly treated by **MCCALLUM** on the below dates were also prescribed dangerous, highly addictive Schedule II controlled substances:

COUNT	BENEFICIARY	APPX DATE OF SERVICE	CPT CODE BILLED	APPX. AMOUNT BILLED
13	J.L	1/31/2019	99212	\$102 to Medicaid

COUNT	BENEFICIARY	APPX DATE OF SERVICE	CPT CODE BILLED	APPX. AMOUNT BILLED
14	M.T.	11/8/2019	99212	\$102 to Medicare; \$102 to Medicaid
15	T.H.	7/22/2020	99212	\$102 to Medicare
16	D.H	8/10/2020	99212	\$102 to Medicare; \$102 to Medicaid
17	J.L.	8/10/2020	99212	\$102 to Medicaid
18	M.T.	9/22/2020	99212	\$102 Medicare

Each in violation of Title 18, United States Code, Sections 1347 and 2.

NOTICE OF CRIMINAL FORFEITURE
(18 U.S.C. § 982, 21 U.S.C. § 853)

40. The allegations contained in Paragraphs 1 through 39 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982 and Title 21, United States Code, Section 853.

41. Pursuant to Title 21, United States Code, Section 853, upon conviction of an offense in violation of Title 21, United States Code, Sections 841 and 856, as alleged in Counts 1 through 12 of this Indictment, the defendant,

KELLY MCCALLUM,

shall forfeit to the United States any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such offenses and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of,

the offense.

42. Pursuant to Title 18, United States Code, Section 982(a)(7), upon conviction of an offense in violation of Title 18, United States Code, Section 1347, as alleged in Counts 13 through 18 of this Indictment, the defendant,

KELLY MCCALLUM,

shall forfeit to the United States any property, real or personal, constituting, or derived from, directly or indirectly, proceeds traceable to the commission of the offense.

43. Defendant **MCCALLUM** is notified that upon conviction, a money judgment may be imposed equal to the total value of the property subject to forfeiture.

44. 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 **MCCALLUM** 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 C. MURPHY, JR.
ACTING UNITED STATES ATTORNEY

VICTOR L. IVY
ASSISTANT UNITED STATES ATTORNEY

JOSEPH S. BEEMSTERBOER
ACTING CHIEF, FRAUD SECTION, CRIMINAL DIVISION