2014R00153/AER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

filed 3/31/2022 4:20 p.m.

UNITED STATES OF AMERICA	:	Hon. Zahid Quraishi
	:	
v.	:	Crim. No. 22-234 (ZNQ)
	:	
FLORENCE NDUBIZU	:	21 U.S.C. § 846
	:	21 U.S.C. §§ 841(a)(1) and (b)(1)(C)
	:	21 U.S.C. § 856
	:	18 U.S.C. § 2

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Trenton, charges:

COUNT ONE
(Conspiracy to Distribute and to Dispense, and to Possess with Intent to Distribute and to Dispense, Schedule II Controlled Substances)

Background

1. From at least as early as 2014 and continuing to on or about August 31, 2017, defendant FLORENCE NDUBIZU operated her pharmacy as a criminal enterprise, unlawfully distributing and dispensing tens of thousands of doses of Oxycodone and other Schedule II controlled substances for profit. Defendant NDUBIZU, and her employee coconspirators acting at her direction, filled fraudulent prescriptions outside the usual course of professional practice, knowing that the drugs would not be used for a legitimate medical purpose, but instead would be illegally diverted, including to street-level drug dealers. This Indictment charges defendant NDUBIZU with conspiring with others to unlawfully distribute and dispense controlled substances from her pharmacy, with unlawfully distributing and dispensing controlled substances, and with

maintaining her pharmacy as a premises used for the unlawful distribution of drugs.

2. At times relevant to this Indictment:

a. Defendant FLORENCE NDUBIZU was a resident of Mercer County, New Jersey, and was a pharmacist licensed by the State of New Jersey and authorized by the United States Drug Enforcement Administration ("DEA") to dispense controlled substances to persons who presented valid prescriptions for such controlled substances. NDUBIZU co-owned, operated, and was the Pharmacist-in-Charge of Healthcare Pharmacy ("HCP"), located in Trenton, New Jersey. HCP was registered as a pharmacy with the DEA from September 24, 1997 to October 5, 2017. The DEA rescinded HCP's authority to dispense controlled substances by an Immediate Suspension of Registration order on August 31, 2017, and NDUBIZU surrendered HCP's registration to the DEA on October 5, 2017. As described herein, NDUBIZU unlawfully dispensed and distributed large quantities of Schedule II controlled substances, including Oxycodone, to customers of HCP outside the usual course of professional practice and not for a legitimate medical purpose, in order to make profit. NDUBIZU instructed her employees at HCP to do the same. NDUBIZU further unlawfully dispensed and distributed large quantities of Schedule II controlled substances, including Oxycodone, to drug dealers, who redistributed those controlled substances to others for profit, within and in the vicinity of HCP and elsewhere.

b. Co-conspirator 1 ("CC-1"), not charged as a defendant herein, resided in Mercer County, New Jersey, and was employed by NDUBIZU as a part-time security guard at HCP. NDUBIZU paid CC-1 off the-books and in cash. CC-1 also was a drug dealer in the Trenton area who distributed controlled substances obtained from, among others, NDUBIZU.

c. Co-conspirator 2 ("CC-2"), not charged as a defendant herein, resided in Mercer County, New Jersey, and was a customer of HCP. CC-2 was a drug dealer in the Trenton area who distributed controlled substances obtained from, among others, NDUBIZU.

d. Co-conspirator 3 ("CC-3"), not charged as a defendant herein, resided in Mercer County, New Jersey, and was employed by NDUBIZU as a Pharmacy Technician at HCP.

e. Co-conspirator 4 ("CC-4"), not charged as a defendant herein, resided in Mercer County, New Jersey, and was employed by NDUBIZU as a Pharmacy Technician at HCP.

f. Co-conspirator 5 ("CC-5"), not charged as a defendant herein, resided in Mercer County, New Jersey, and was employed by NDUBIZU as a Pharmacy Technician at HCP.

g. Confidential Source 1 ("CS-1") was a customer of HCP and also was a confidential source working on behalf of and at the direction of law enforcement.

h. Undercover Officer 1 ("UC-1") was a law enforcement officer working on behalf of the DEA.

i. Undercover Officer 2 ("UC-2") was a law enforcement officer working on behalf of the DEA.

j. Undercover Officer 3 ("UC-3") was a law enforcement officer working on behalf of the DEA.

k. Law Enforcement Officer 1 ("Officer-1") was a law enforcement officer of the Trenton Police Department.

l. Law Enforcement Officer 2 ("Officer-2") was a law enforcement officer of the Trenton Police Department.

m. Law Enforcement Officer 3 ("Officer-3") was a law enforcement officer of the Trenton Police Department.

n. Physician-1 was a licensed physician who practiced medicine in the State of New Jersey.

o. Physician-2 was a licensed physician who practiced medicine in the State of New Jersey.

p. Witness-1 was an assistant to Physician-2.

q. Distributor-1 was a drug wholesale company headquartered in Pennsylvania. From on or about September 1, 2014 to on or about October 31, 2016, Distributor 1 was the primary vendor of controlled substances and other drugs to HCP. Distributor-1 also supplied controlled substances and other drugs to HCP prior to becoming HCP's primary vendor, under other agreements, including an agreement dated May 1, 2012.

r. Distributor-2 was a drug wholesale company, headquartered in Illinois. From on or about November 7, 2016 to on or about August 31,

2017, Distributor-2 was the primary vendor of controlled substances and other drugs to HCP.

s. Customer-1 was a customer of HCP.

t. Customer-2 was a customer of HCP.

u. Customer-3 was a customer of HCP.

v. Customer-4 was a customer of HCP.

w. Customer-5 was a customer of HCP.

The Controlled Substances Act and Federal Regulations Governing the Dispensing of Schedule II Controlled Substances

3. The Controlled Substances Act ("CSA"), codified in Title 21 of the United States Code, governed the manufacture, distribution, and dispensing of controlled substances in the United States.

4. Title 21, United States Code, Section 841(a)(1), provided that "[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

5. Title 21, United States Code, Section 802(10) provided that the term "dispense" meant "to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for such delivery."

6. Title 21, United States Code, Section 802(11) provided that the term "distribute" meant "to deliver (other than by administering or dispensing) a controlled substance or a listed chemical."

7. The CSA categorized certain controlled substances in five schedules based on, among other things, their potential for abuse, and the extent to which they had an accepted medical use. Schedule II controlled substances had a high potential for abuse, and an accepted medical use, and their abuse could lead to severe psychological or physical dependence.

8. Oxycodone was an opiate and a narcotic analgesic (*i.e.*, a painkiller) that was similar to morphine and was classified as a Schedule II controlled substance. Oxycodone was used to treat severe pain and, even if taken only in prescribed amounts, could cause physical and psychological dependence. Oxycodone was used in pain relief drugs in varying dosage strengths, including 5, 10, 30, 40, 60, and 80 milligram ("mg") amounts. Oxycodone was manufactured and marketed as generic Oxycodone and under different brand names, including OxyContin. Oxycodone was also bundled in a single pill with other pain relievers and marketed under different brand names. For example, Percocet, which contained Oxycodone and Acetaminophen, was manufactured by numerous pharmaceutical companies under the brand names Endocet, Roxicet, Roxilox, and Tylox.

9. Morphine was an opiate and a narcotic analgesic that was classified as a Schedule II controlled substance prescribed to relieve moderate

to severe pain. Like other Schedule II substances, morphine had a high potential for abuse.

10. Methadone was an opiate and a narcotic analgesic that was similar to morphine and was classified as a Schedule II controlled substance prescribed to relieve severe pain. Like other Schedule II substances, methadone had a high potential for abuse.

11. Hydrocodone was an opiate and a narcotic analgesic and cough suppressant and was classified as a Schedule II controlled substance prescribed to relieve moderate to severe pain. Like other Schedule II substances, hydrocodone had a high potential for abuse.

12. Dextroamphetamine and Amphetamine were central nervous system stimulants and classified as Schedule II controlled substances prescribed to treat ADHD and narcolepsy. The combination of Dextroamphetamine and Amphetamine was manufactured and sold as a generic drug as well as under the brand name Adderall. Like other Schedule II substances, Dextroamphetamine and Amphetamine had a high potential for abuse.

13. The Attorney General of the United States had the authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances. The Attorney General required every person who manufactured, distributed, or dispensed any controlled substance, or who proposed to do so, to register with the DEA. Such persons included pharmacies.

14. The Attorney General of the United States exercised rulemaking authority regarding the dispensing of controlled substances through the promulgation of Title 21, Code of Federal Regulations, Section 1306, which included the following provisions:

a. Pharmacies may legally dispense controlled substances only pursuant to an effective prescription – *i.e.*, one "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." Furthermore, "[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription." Thus, "[a]n order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) 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."

b. Section 1306.05 established basic requirements for the content of a valid prescription for a controlled substance, including that all such prescriptions were to 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."

c. Although a "prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations," there was, again, "[a] corresponding liability [that] rests upon the pharmacist . . . who fills a prescription not prepared in the form prescribed by DEA regulations."

d. Further, Section 1306.06 stated that "[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."

e. Section 1306.12(a) stated that the refilling of a prescription for a Schedule II controlled substance was prohibited. Thus, a new prescription had to be issued if continued use of a Schedule II controlled substance was medically appropriate.

f. Section 1306.13(a) permitted the partial filling of Schedule II controlled substance prescriptions "if the pharmacist [wa]s unable to supply the full quantity called for in a written or emergency oral prescription and he ma[de] a notation of the quantity supplied on the face of the written prescription, written record of the emergency oral prescription, or in the electronic prescription record." In that event, "[t]he remaining portion of the prescription [was permitted to] be filled within 72 hours of the first partial filling; however, if the remaining portion [was] not or [could not] be filled within the 72-hour period, the pharmacist" was required to "notify the prescribing

individual practitioner," and "[n]o further quantity [could] be supplied beyond 72 hours without a new prescription."

15. Every registered pharmacy and pharmacist engaging in manufacturing, distributing, or dispensing a controlled substance was required to maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed.

16. Federal regulations further required that a pharmacy report the theft or significant loss of any controlled substance within one business day of the discovery of the theft or loss.

The New Jersey Statutes and Administrative Regulations Governing Pharmacists' Dispensing of Controlled Substances

17. The New Jersey Pharmacy Practice Act ("NJPPA") was codified in Title 45, New Jersey Statutes, Chapter 14. The NJPPA sought "to promote, preserve, and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy, the licensure of pharmacists and the permitting, control and regulation of all pharmacy practice sites in [New Jersey] that engage in the practice of pharmacy."

18. The NJPPA established the New Jersey State Board of Pharmacy (the "Board") to enforce the provisions of the NJPPA, and set forth the responsibilities of the Board, including, among other things, the licensure, examination, and continuing education of all pharmacists; the establishment of professional standards and rules of conduct for pharmacists engaged in the practice of pharmacy; and the establishment of record keeping requirements.

19. The NJPPA defined a "Pharmacist-in-Charge" as "a pharmacist who accepts responsibility for the operation of a pharmacy practice site in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs."

20. The NJPPA defined "Pharmacy Technician" as an individual working in a pharmacy practice site who, under the immediate supervision of a pharmacist, assisted in pharmacy activities as permitted by Section 41 of the NJPPA and the rules and regulations of the Board that did not require the professional judgment of a pharmacist.

21. The NJPPA defined a Drug Utilization Review ("DUR") as including, among other things "(1) Evaluation of prescription drug orders and patient records for known allergies, rational therapy-contraindications, appropriate dose and route of administration and appropriate directions for use; (2) Evaluation of prescription drug orders and patient records for duplication of therapy; (3) Evaluation of prescription drug orders and patient records for interactions between drug-drug, drug-food, drug-disease and adverse drug reactions; and (4) Evaluation of prescription drug orders and patient records for proper utilization, including over- or under-utilization, and optimum therapeutic outcomes."

22. The NJPPA required that pharmacists conduct a DUR "before each new medication is dispensed or delivered to a patient," and "a prospective drug utilization review . . . before refilling a prescription or medication order to the extent he deems appropriate in his professional judgment." The NJPPA also

required that "[a] pharmacist shall exercise independent professional judgment as to whether or not to dispense or refill a prescription or medication order," and "[i]n determining to dispense or refill a prescription or medication order, the decision of the pharmacist shall not be arbitrary and shall be based on professional experience, knowledge or available reference materials."

23. The NJPPA required that all pharmacies maintain a patient profile system that would "enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing," and that would include relevant information regarding a patient's name and address; the name, strength, and quantity of the drug dispensed; and any significant individual patient history.

The New Jersey Pharmacy Board's Regulations Governing Pharmacists

24. Pursuant to the NJPPA, the Board also promulgated administrative regulations governing the practice of pharmacy in New Jersey (the "Regulations"). The Regulations included the requirement that pharmacists comply with all rules, regulations, and laws governing the practice of pharmacy.

25. The Regulations set forth the responsibilities of the Pharmacist-in-Charge, including that "[a] pharmacist-in-charge shall be a full-time employee, employed for a minimum of 35 hours per week and shall be physically present in the pharmacy or pharmacy department for that amount of time necessary to supervise and ensure," among other things, the following:

a. "The pharmacy is staffed by sufficient, competent personnel in keeping with the size, scope and complexity of the pharmaceutical services provided by the pharmacy";

b. "Accurate records of all prescription medication received and dispensed are maintained";

c. "Policies are in place regarding accurate dispensing and labeling of prescriptions and that such policies are followed";

d. "Security of the prescription area and its contents are maintained at all times consistent with the requirements set forth" elsewhere in the Regulations;

e. "The prescription area is maintained in an orderly manner"; and

f. "The pharmacy and all pharmacy personnel provide pharmaceutical services in accordance with acceptable professional standards and comply with all Federal and State statutes, rules and regulations governing the practice of pharmacy."

26. Like the NJPPA, the Regulations required pharmacists to conduct a DUR. Specifically, the Regulations stated that:

a. Upon receipt of a new or refill prescription, a pharmacist shall examine the patient's profile record before dispensing the medication, to determine the possibility of a potentially significant drug interaction, reaction or misutilization of the prescription. Upon determining a potentially significant drug interaction, reaction or misutilization, the pharmacist shall take the

appropriate action to avoid or minimize the problem, which shall, if necessary, include consultation with the patient and/or the practitioner.

b. Upon receipt of a refill prescription, a pharmacist shall determine if a substantial time, as is appropriate for that drug in the pharmacist's professional judgment, has elapsed from the last filling. When necessary, the pharmacist shall consult with the practitioner and/or the patient to ensure that continued use of the medication is appropriate.

c. When patient profile records indicate sporadic, erratic, or irrational use of medication by a patient, the pharmacist shall consult with the patient and/or the practitioner to determine if continued use of the medication is appropriate.

27. The Regulations recognized that "[t]he pharmacist shall have the right to refuse to fill a prescription if, in his or her professional judgment, the prescription is outside the scope of the practice of the practitioner, or if the pharmacist has sufficient reason to question the validity of the prescription; or to protect the health and welfare of the patient."

The New Jersey Prescription Monitoring Program

28. Under New Jersey law, New Jersey pharmacies were required to report to the State of New Jersey Prescription Monitoring Program ("NJ PMP"), a component of the New Jersey Division of Consumer Affairs within the State of New Jersey Department of Law and Public Safety. Pharmacies were required to report the dispensing of controlled dangerous substances in New Jersey, including Schedule II controlled substances such as Oxycodone, Morphine,

Methadone, Hydrocodone, Dextroamphetamine, and Amphetamine. The NJ PMP maintained, among other information, records of a patient's name, date of birth, address, and telephone number, the date a prescription was written and dispensed; the number or designation identifying the prescription and the National Drug Code of the drug dispensed; the controlled substance name, strength, and quantity dispensed; and the practitioner's name and DEA registration number.

29. The NJ PMP provided access to the data maintained by the NJ PMP to both physicians and pharmacists, thereby enabling physicians and pharmacists to review a particular patient's history of filling prescriptions for controlled substances, and to detect possible drug-seeking behavior and the diversion of controlled substances.

The Conspiracy

30. From in or about 2014 to on or about August 31, 2017, in Mercer County, in the District of New Jersey and elsewhere, defendant

FLORENCE NDUBIZU

did knowingly and intentionally conspire and agree with others, including CC-1, CC-2, CC-3, CC-4, CC-5, and others, to distribute and dispense, outside the usual course of professional practice and not for a legitimate medical purpose, and to possess with intent to distribute and dispense, outside the usual course of professional practice and not for a legitimate medical purpose, mixtures and substances containing detectible amounts of Schedule II controlled substances,

including Oxycodone, contrary to Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C).

Manner and Means

31. It was part of the conspiracy that defendant FLORENCE NDUBIZU, as the Pharmacist-in-Charge of HCP, and as co-owner and operator of HCP, purchased significant quantities of Oxycodone products and other Schedule II substances from Distributor-1, Distributor-2, and others to satisfy demand for large quantities of Oxycodone and other Schedule II substances from HCP customers, whom NDUBIZU knew to be fraudulently obtaining and/or forging prescriptions. NDUBIZU further ordered and purchased significant quantities of Oxycodone products and other Schedule II substances for resale to customers, knowing that customers' purported prescriptions were not issued in the usual course of professional treatment and were not issued for a legitimate medical purpose. During the conspiracy:

a. The Automation of Reports and Consolidated Orders System ("ARCOS") was an automated, comprehensive drug reporting system that monitored the flow of DEA controlled substances from their point of manufacture, through commercial distribution channels, to the point of sale or distribution at the dispensing/retail level (*e.g.*, hospitals, retail pharmacies, practitioners, mid-level practitioners, and teaching institutions). Included in the list of controlled substance transactions tracked by ARCOS were the following: All Schedule I and Schedule II substances (reported by manufacturers and distributors); Schedule III narcotic and gamma-

hydroxybutyric acid (GHB) substances (reported by manufacturers and distributors); and selected Schedule III and IV psychotropic drugs (reported by manufacturers only). ARCOS accumulated these transactions, which were then summarized in reports that provided information to investigators in federal and state government agencies, which could then be used to identify the diversion of controlled substances into illicit distribution channels.

b. An analysis of ARCOS records showed that, in 2014, HCP, at the direction and under the control of defendant NDUBIZU, purchased approximately 888,300 dosage units (*i.e.*, pills) of products containing Oxycodone (including generic Oxycodone, OxyContin, Percocet, and Endocet), which equated to approximately 88% of the total amount of ARCOS reportable controlled substances ordered by HCP. This placed HCP – an independent, single-location pharmacy – as the fifth largest purchaser of Oxycodone in the State of New Jersey, and the second largest in southern New Jersey.

c. In 2015, HCP purchased approximately 921,040 dosage units of Oxycodone, which equated to approximately 86% of the total amount of ARCOS reportable controlled substances ordered by HCP. This placed HCP as the fourth largest buyer of Oxycodone in the State of New Jersey, and the largest in southern New Jersey.

d. In 2016, HCP purchased approximately 822,000 dosage units of Oxycodone, which equated to approximately 85% of the total amount of ARCOS reportable controlled substances ordered by HCP. This placed HCP

as the fifth largest buyer of Oxycodone in the State of New Jersey, and the largest in southern New Jersey.

e. In a letter dated on or about August 23, 2016, Distributor-1 notified defendant NDUBIZU that Distributor-1 was suspending all sales of controlled substances to HCP due to red flags in, among other things, HCP's ordering and dispensing history. These red flags included, among other things, the high percentage of Oxycodone among HCP's total orders of controlled substances; the high percentage of HCP's patients receiving only Oxycodone from the pharmacy; the large number of patients paying primarily in cash and receiving combinations of Oxycodone 30 mg and methadone 10 mg in large quantities; examples of doctor shopping among patients receiving controlled substances from the pharmacy; the filling of duplicate and/or nonclinical combinations of prescriptions; and the filling of prescriptions for patients with excessive quantities of controlled substances prescribed. Distributor-1 continued to provide HCP with non-controlled substances.

f. On or about October 31, 2016, defendant NDUBIZU closed HCP's account with Distributor-1. On or about November 7, 2016, NDUBIZU opened a new primary vendor account with Distributor-2 and resumed ordering large quantities of Oxycodone products and other Schedule II controlled substances.

g. An analysis of ARCOS records showed that, between on or about January 1, 2017 and on or about August 16, 2017, HCP purchased approximately 245,900 dosage units of Oxycodone, which equated to

approximately 85% of the total amount of ARCOS reportable controlled substances ordered by HCP. This placed HCP as the eighteenth largest buyer of Oxycodone in the State of New Jersey, and the tenth largest in southern New Jersey. This data reflected only a partial year of purchases because, on August 31, 2017, law enforcement executed a search warrant on HCP and the DEA served NDUBIZU with an Immediate Suspension of Registration order, suspending NDUBIZU and HCP's ability to purchase and dispense controlled substances.

32. It was further part of the conspiracy that, after ordering and obtaining large quantities of Oxycodone and other Schedule II substances, defendant NDUBIZU filled facially invalid and fraudulent prescriptions at HCP for profit. For example:

a. NDUBIZU and HCP filled prescriptions showing "VOID" on their face, indicating that the purported prescriptions were the result of photocopying.

b. NDUBIZU and HCP filled prescriptions that did not identify a patient's name.

c. NDUBIZU and HCP filled prescriptions purportedly from the same physician with different and non-matching physician signatures.

d. NDUBIZU and HCP filled prescriptions missing the appropriate watermarks and other indicia that they had been written on a legitimate prescription pad.

e. NDUBIZU and HCP filled prescriptions where the customer had altered and increased the number of dosage units (pills) called for by the prescription, including in cases where customers altered the prescriptions while in HCP in front of CC-3, CC-4, CC-5, and others, and NDUBIZU was immediately informed that the prescriptions had been altered.

f. NDUBIZU failed to report any of these fraudulent prescriptions to DEA, and instead filled them for profit.

33. It was further part of the conspiracy that defendant NDUBIZU dispensed and distributed Schedule II controlled substances without conducting a DUR or consulting a patient's NJ PMP records, in circumstances calling into question whether the purported prescriptions were "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice[,]" including, but not limited to the following:

a. According to NJ PMP data collected between 2011 and August 30, 2017, defendant NDUBIZU filled Oxycodone and other Schedule II prescriptions for approximately 100 customers who received prescriptions averaging over 200 morphine milligram equivalent doses ("MME") of opiates per day, including multiple patients receiving over 1,000 MME per day. For reference, the March 18, 2016 CDC Guideline for Prescribing Opioids for Chronic Pain (the "CDC Guideline") provided: "When opioids are started, clinicians should prescribe the lowest effective dosage. Clinicians should use caution when prescribing opioids at any dosage, should carefully reassess evidence of individual benefits and risks when considering increasing dosage to

≥50 morphine milligram equivalents (MME)/day, and should avoid increasing dosage to ≥90 MME/day or carefully justify a decision to titrate dosage to ≥90 MME/day." Additionally, "[t]he clinical and contextual evidence reviews found that opioid overdose risk increases in a dose-response manner, that dosages of 50–<100 MME/day have been found to increase risks for opioid overdose by factors of 1.9 to 4.6 compared with dosages of 1–<20 MME/day, and that dosages ≥100 MME/day are associated with increased risks of overdose 2.0–8.9 times the risk at 1–<20 MME/day. In a national sample of Veterans Health Administration patients with chronic pain who were prescribed opioids, mean prescribed opioid dosage among patients who died from opioid overdose was 98 MME (median 60 MME), compared with mean prescribed opioid dosage of 48 MME (median 25 MME) among patients not experiencing fatal overdose."

b. According to NJ PMP data, defendant NDUBIZU filled over 1,000 prescriptions where the customer had purportedly been prescribed the "trinity" combination of an opioid, benzodiazepine, and a muscle relaxant. The CDC Guideline provided: "Clinicians should avoid prescribing opioid pain medication and benzodiazepines concurrently whenever possible." The CDC Guideline further provided that "[b]enzodiazepines and opioids both cause central nervous system depression and can decrease respiratory drive. Concurrent use is likely to put patients at greater risk for potentially fatal overdose."

c. According to PMP data, defendant NDUBIZU filled over 10,000 prescriptions where the customer had submitted prescriptions from

different doctors for the same Schedule II drug, and filled Oxycodone and other Schedule II prescriptions for over 30 customers, who submitted Oxycodone and other prescriptions from three or more different physicians, all indicative of "doctor shopping."

d. According to PMP data, defendant NDUBIZU filled hundreds of prescriptions for out-of-state customers traveling long distances to HCP, including many regular customers traveling from the New York City area and others traveling over 100 miles from other areas of New York State.

34. It was further part of the conspiracy that defendant NDUBIZU filled fraudulent prescriptions for large quantities of Oxycodone without calling the prescribing physicians to confirm that the prescriptions were issued in the usual course of professional practice and for a legitimate medical purpose. For example, HCP filled Oxycodone prescriptions for Customer-1 from in or around 2011 to in or around February 2015 without contacting the purported prescribing physician, Physician-1, to confirm any of the purported prescriptions. For example, on or about October 3, 2014, HCP dispensed 180 pills of Oxycodone 30 mg to Customer-1 and on or about November 8, 2014, HCP dispensed 180 pills of Oxycodone 30 mg, all without contacting Physician-1. In fact, Physician-1 had dismissed Customer-1 as a patient more than two years earlier. A Pharmacy Benefit Management Organization alerted Physician-1 to suspicious prescription-filling behavior by Customer-1. Physician-1 investigated and found that Customer-1 had been filling forged Oxycodone prescriptions at HCP, purportedly issued by Physician-1, since 2011, including

at least one prescription written for Customer-1's relative. HCP did not contact Physician-1 to confirm any of the forged prescriptions, which Physician-1 would have identified as fraudulent.

35. It was further part of the conspiracy that defendant NDUBIZU continued filling prescriptions for customers who had submitted fraudulent prescriptions in the past. For example, on or about October 7, 2015, Witness-1 contacted HCP on behalf of Physician-2. Witness-1 informed an HCP employee that patients were submitting forged prescriptions to HCP that purported to have been issued by Physician-2. Witness-1 instructed HCP to stop filling all prescriptions purporting to be from Physician-2 and to provide Witness-1 with HCP's records for prescriptions filled purporting to have been issued by Physician-2. HCP stopped filling prescriptions for these patients purportedly from Physician-2, but continued filling the patients' prescriptions purporting to have been issued by new physicians, some of whom were located outside of the State of New Jersey. For example, Customers 2, 3, 4, and 5 filled forged prescriptions purporting to have been issued by Physician-2 at HCP. After having been contacted by Witness-1, HCP filled prescriptions for Oxycodone 30 mg purporting to have been issued by new physicians for Customer-2 later in October 2015, for Customer-3 and Customer-4 in May and June 2016, and for Customer-5 in June 2016. Moreover, HCP never provided Witness-1 with any records of the prescriptions from Physician-2 that had been filled at HCP.

36. It was further part of the conspiracy that defendant NDUBIZU filled Oxycodone prescriptions in exchange for cash payments in excess of the

drug's normal retail price. Specifically, NDUBIZU charged and instructed employees, including CC-3, CC-4, and CC-5 to charge amounts ranging from $100 to over $1,000 in cash per prescription for Oxycodone products. NDUBIZU concealed and instructed CC-3 to conceal many of these cash sales from NJ PMP reporting by coding prescriptions as "on hold[,]" "voided[,]" or "reversed[,]" in HCP's record keeping system, despite these prescriptions having actually been filled, and by deleting prescription records from HCP's record keeping system after prescriptions had been filled. NDUBIZU also charged and instructed employees, including CC-3, CC-4, and CC-5, to charge additional cash surcharges for Endocet while falsely billing the prescriptions as generic Oxycodone to customer's insurance companies in order to obtain favorable reimbursement rates from the insurers as well as cash payments from the customers.

37. It was further part of the conspiracy that defendant NDUBIZU did not report large quantities of missing Oxycodone inventory to the DEA, including the Oxycodone that had been diverted through cash sales and falsely recorded as "on hold[,]" "voided[,]" or "reversed." After suspending NDUBIZU and HCP's registration in August 2017, the DEA conducted an audit of HCP's inventory records and NJ PMP records and found that from on or about April 20, 2015 to on or about August 31, 2017, HCP diverted more than 80,000 Oxycodone containing pills (including Endocet, Oxycodone, and Percocet), containing more than 2 kilograms of Oxycodone.

38. It was further part of the conspiracy that defendant NDUBIZU instructed HCP employees, including CC-3 and CC-4, to dispense and distribute Schedule II controlled substances when neither NDUBIZU nor any other pharmacist was present at HCP.

39. It was further part of the conspiracy that defendant NDUBIZU instructed employees, including CC-3 and CC-4, to dispense and distribute Schedule II controlled substances in circumstances demonstrating that the substances would be diverted from the customer submitting the prescription, including by instructing CC-3 and CC-4 to sell customers additional prescription bottles so that customers could subdivide their prescriptions for redistribution.

40. It was further part of the conspiracy that defendant NDUBIZU dispensed and distributed Oxycodone products to CC-1 and CC-2, knowing that those controlled substances would not be used by CC-1 and CC-2 for a legitimate medical purpose, but would instead be illegally redistributed to others. Among other things, NDUBIZU filled prescriptions directly for CC-1 and CC-2; filled prescriptions for individuals brought into the pharmacy by CC-1 and CC-2 whose prescriptions were paid for in cash by CC-1 and CC-2; informed CC-1 and CC-2 when a customer was filling a prescription for Oxycodone; and allowed CC-1 and CC-2 to sit in HCP for hours each day and purchase Oxycodone from HCP's customers immediately after NDUBIZU dispensed Oxycodone prescriptions to those customers. CC-1 and CC-2 then

redistributed Oxycodone for profit to other individuals within HCP, on the street directly in front of HCP, and elsewhere.

41. For example, on or about February 23, 2016, Officer-1 conducted physical surveillance outside the front entrance of HCP. Officer-1 observed CC-1 exit HCP. CC-1 walked up to the passenger side of a vehicle holding an object consistent in size and color with a prescription bottle. CC-1 opened the passenger-side door of the vehicle and leaned in. CC-1 then leaned out of the vehicle and walked back into HCP. Officer-1 requested that law enforcement stop the vehicle due to the suspected narcotics transaction. Officer-2 stopped the vehicle and found the driver in possession of an unmarked prescription bottle containing 10 Percocet pills. The driver was placed under arrest. Later that day, Officer-1 observed CC-1 exit HCP and get into a vehicle and leave the area. Based on his earlier observation of the suspected drug transaction, Officer-1 requested that law enforcement stop the vehicle. Officer-3 stopped the vehicle and found passenger CC-1 in possession of two prescription bottles containing Schedule IV Clonazepam tablets and Schedule III Buprenorphine Naloxone Hydrochloride tablets, as well as loose Oxycodone and Alprazolam pills and over $2,500 in United States currency. CC-1 stated, "I work for the pharmacy and deliver pills for them." Officer-2 placed CC-1 under arrest.

Undercover Operations

42. During the conspiracy, law enforcement conducted a series of undercover operations to obtain controlled substances from HCP using fraudulent and otherwise suspect prescriptions in order to observe HCP's

practices in unlawfully dispensing controlled substances. It was part of the conspiracy that defendant NDUBIZU and other HCP employees acting at NDUBIZU's direction (including CC-3 and CC-4) distributed and dispensed controlled substances outside the usual course of professional practice and not for a legitimate medical purpose during these undercover transactions.

43. On or about September 8, 2015, CS-1 and UC-2 entered HCP. CS-1 submitted three prescriptions to CC-3 for 4 ounces of Promethazine with Codeine, 60 tablets of Xanax 1 mg, and 90 tablets of Oxycodone 15 mg. CC-3 processed the prescriptions and had CC-4 fill the prescription bottles. CC-4 provided CS-1 with the full prescription bottles for $163.50 in United States currency. CS-1 opened the Oxycodone prescription bottle and poured some of the tablets into CS-1's hand. CS-1 requested an additional prescription bottle from CC-4 "for this," referring to the pills in CS-1's hand. CC-4 provided CS-1 with an additional prescription bottle and observed while CS-1 placed the Oxycodone pills into the bottle and sold them to UC-2.

44. On or about October 29, 2015, CS-1 and UC-1 entered HCP. UC-1 submitted four prescriptions to CC-3 for 120 tablets of Hydrocodone 10 mg, 120 tablets of OxyContin 15 mg, 60 tablets of Adderall 5 mg, and 60 tablets of Xanax 1 mg. CC-3 provided the prescriptions to defendant NDUBIZU, who reviewed the prescriptions and directed that they be filled. CC-4 filled the prescription bottles and provided them to UC-1. UC-1 requested an additional prescription bottle in order to give pills to CS-1. CC-4 provided an additional prescription bottle to UC-1. UC-1 opened the OxyContin and Hydrocodone

prescription bottles that UC-1 had just received and provided a number of OxyContin and Hydrocodone pills to CS-1 in view of CC-4 and NDUBIZU.

45. On or about December 22, 2015, CS-1 and UC-1 entered HCP. CS-1 submitted to defendant NDUBIZU prescriptions for 90 tablets of Oxycodone 15 mg. UC-1 submitted prescriptions for 60 tablets of Oxycontin 15 mg, 120 tablets of Hydrocodone 10 mg, 60 tablets of Alprazolam 1 mg, and 60 tablets of Amphetamine salts 5 mg. NDUBIZU processed the prescriptions and had CC-4 fill the prescription bottles. CC-4 provided the full prescription bottle to CS-1 for $180 and bottles to UC-1 for $154.38 in United States currency. CS-1 then sold the bottle of Oxycodone that CS-1 had just received to UC-1 for $700 while standing in front of NDUBIZU and CC-4.

46. On or about March 11, 2016, UC-1 and UC-2 entered HCP. UC-1 submitted to defendant NDUBIZU a prescription for a quantity of Hydrocodone, 60 tablets of the combination of Dextroamphetamine and Amphetamine 10 mg and 60 tablets of Alprazolam 1 mg. UC-2 submitted prescriptions for 120 tablets of Oxycodone 10 mg and a quantity of Clonidine to NDUBIZU. NDUBIZU initially returned the prescription to UC-1, stating that the prescription for Hydrocodone was written incorrectly because it did not provide a dosage. A few minutes later, UC-1 reapproached NDUBIZU and asked whether NDUBIZU would fill only the portion of the prescription for the combination of Dextroamphetamine and Amphetamine and for the Alprazolam. NDUBIZU agreed, partially processed UC-1's prescription, processed UC-2's prescriptions, and had CC-4 fill the prescription bottles. UC-1 paid $168.44,

and UC-2 paid $200 in United States currency. UC-1 requested an extra pill bottle from CC-4. CC-4 then sold UC-1 an additional pill bottle for $1.00. CC-4 then observed while UC-2 sold to UC-1 a portion of the Oxycodone prescription that UC-2 had just received from HCP.

47. On or about March 30, 2017, UC-1 and UC-3 entered HCP. UC-1 provided defendant NDUBIZU with three prescriptions: (i) a prescription for 30 tablets of Tramadol 50 mg, prescribed by a practicing physician, (ii) a prescription for 120 tablets of Hydrocodone 5 mg, from a fictitious physician, and (iii) a prescription for 60 tablets of the combination of Dextroamphetamine and Amphetamine (generic Adderall) 10 mg, from a fictitious physician. NDUBIZU declined to fill the Hydrocodone and generic Adderall prescriptions because she could not verify them with the physician over the phone, and declined to fill the Tramadol prescription because it was written by a different physician than the other two. But NDUBIZU retained the two fraudulent prescriptions for Hydrocodone and generic Adderall. Approximately one week later, on or about April 6, 2017, UC-1 and UC-3 returned to HCP. At that time, UC-1 told NDUBIZU that her physician had called and spoken to NDUBIZU to confirm the Hydrocodone and generic Adderall prescriptions. NDUBIZU indicated that she had not spoken to UC-1's physician and that it may have been someone else. Nevertheless, NDUBIZU filled the Hydrocodone and generic Adderall prescriptions for $231.86 in cash. CC-4 handed the prescription bottles to UC-1. UC-1 then asked NDUBIZU for an additional bottle and NDUBIZU authorized CC-4 to give UC-1 an additional bottle. UC-1 then sold

UC-3 a portion of the Hydrocodone just received from CC-4 in view of CC-4, while NDUBIZU was present behind the counter. CC-4 asked if UC-1 needed a second additional bottle, UC-1 indicated that UC-1 did, and CC-4 provided it. In other words, on or about April 6, 2017, NDUBIZU unlawfully filled prescriptions that she had previously declined to fill one week earlier, and did so in circumstances making it clear that her customers would illegally subdivide and divert the controlled substances she dispensed using the additional prescription bottles she provided. NDUBIZU knew that by dispensing controlled substances to individuals who engaged in an illegal drug transaction in front of her, using additional prescription bottles she provided, that she was dispensing controlled substances outside the usual course of professional practice and not for any legitimate medical purpose.

Suspension of Registration

48. On or about August 31, 2017, the DEA executed a search warrant at HCP and issued an immediate suspension order on defendant NDUBIZU and HCP. HCP eventually ceased operations and, on October 5, 2017, NDUBIZU surrendered HCP's DEA registration.

49. NDUBIZU knowingly and intentionally agreed to engage in and engaged in the forgoing conduct outside the usual course of professional practice and not for a legitimate medical purpose.

In violation of Title 21, United States Code, Section 846.

COUNT TWO

(Unlawful Distribution and Dispensing a Controlled Substance and Possession with Intent to Distribute and Dispense a Controlled Substance)

50. Paragraphs 1 through 49 of Count One of this Indictment are realleged and incorporated as if set forth in full herein.

51. On or about April 6, 2017, in Mercer County, in the District of New Jersey and elsewhere, defendant

FLORENCE NDUBIZU

did knowingly and intentionally distribute and dispense, attempt to distribute and dispense, and aid and abet the distributing and dispensing, outside the usual course of professional practice and not for a legitimate medical purpose, a mixture and substance containing a detectible amount of Hydrocodone, a Schedule II controlled substance, and a mixture and substance containing a detectible amount of Dextroamphetamine and Amphetamine, Schedule II controlled substances.

In violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(C), and 846, and Title 18, United States Code, Section 2.

COUNT THREE

(Maintaining a Premises for the Illegal Distribution of a Controlled Substance)

52. Paragraphs 1 through 49 of Count One of this Indictment are realleged and incorporated as if set forth in full herein.

53. From in or about 2014 to on or about August 31, 2017, in Mercer County, in the District of New Jersey and elsewhere, defendant

FLORENCE NDUBIZU

did knowingly open, lease, rent, use or maintain a place, namely, Healthcare Pharmacy in Trenton, New Jersey, for the purpose of manufacturing, distributing, and using any controlled substance; and did knowingly and intentionally manage and control a place, namely, Healthcare Pharmacy in Trenton, New Jersey, as owner, lessee, agent, employee, occupant, and mortgagee, and did knowingly and intentionally rent, lease, profit from, and make available for use, that place for the purpose of unlawfully manufacturing, storing and distributing a controlled substance.

In violation of Title 21, United States Code, Sections 856(a)(1) and (a)(2).

FORFEITURE ALLEGATIONS

54. The allegations contained in this Indictment are incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture pursuant to 21 U.S.C. § 853.

55. As a result of the violations of Title 21, United States Code, Sections 846, 841(a)(1), and 856 set forth in Counts One through Three of this Indictment, defendant

FLORENCE NDUBIZU

shall forfeit to the United States of America, pursuant to 21 U.S.C. § 853, any and all property constituting or derived from any proceeds obtained directly or indirectly as a result of the said offenses, and any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the offenses alleged in this Indictment.

SUBSTITUTE ASSETS PROVISION

56. If by any act or omission of the defendants any of the property subject to forfeiture described above:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled, pursuant to 21 U.S.C. § 853(p), to forfeiture of any other property of the defendants up to the value of the above-described forfeitable property.

All pursuant to Title 21, United States Code, Section 853.

A TRUE BILL

FOREPERSON

Philip R. Sellinger by Az.

PHILIP R. SELLINGER
United States Attorney

CASE NUMBER: 22-234 (ZNQ)

United States District Court
District of New Jersey

UNITED STATES OF AMERICA

v.

FLORENCE NDUBIZU

INDICTMENT FOR

21 U.S.C. § 846
21 U.S.C. §§ 841(a)(1) & (2)
21 U.S.C. § 856

A True Bill,

[redacted]
Foreperson

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FOR THE DISTRICT OF NEW JERSEY

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