JMR-JCD/2013R0717

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA v. MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD	Criminal No. 16- 513 (JBS) 21 U.S.C. § 846 § 841(a)(1) and (b)(1)(C) § 856 § 843(b) 18 U.S.C. § 2 Notice of Forfeiture

INDICTMENT

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

COUNT 1
[21 U.S.C. § 846 – Conspiracy to Distribute and to Dispense, and to Possess with Intent to Distribute and Dispense, Schedule II Controlled Substances]

The Defendants and Other Individuals and Entities

1. At all times relevant to this Indictment:

a. Defendant MICHAEL LUDWIKOWSKI was a resident of Medford, New Jersey, and a pharmacist licensed by the State of New Jersey to dispense controlled substances to persons who presented valid prescriptions for such controlled substances.

b. Defendant MICHAEL LUDWIKOWSKI owned and operated, and was the Pharmacist-in-Charge of Olde Medford Pharmacy ("OMP"), located in Medford, New Jersey. OMP was registered as a pharmacy with the U.S. Drug Enforcement Administration ("DEA") in or about March 2008 and opened in or about May 2008. Prior to opening OMP, LUDWIKOWSKI had worked as a pharmacist for a large retail pharmacy chain ("Pharmacy Chain 1"), in part in the area of loss prevention.

c. Defendant MICHAEL LUDWIKOWSKI also owned and operated Medford Family Pharmacy ("MFP"), located in Medford, New Jersey. MFP was registered as a pharmacy with the DEA in or about July 2012 and opened in or about October 2012.

d. Defendant DAVID GOLDFIELD was a pharmacist licensed by the State of New Jersey to dispense controlled substances to persons who presented valid prescriptions for such controlled substances.

e. Defendant MICHAEL LUDWIKOWSKI hired defendant DAVID GOLDFIELD to work for LUDWIKOWSKI as a pharmacist at OMP and MFP, after GOLDFIELD's previous employer, a large retail pharmacy chain ("Pharmacy Chain 2"), terminated GOLDFIELD from his position as a full-time Staff Pharmacist. GOLDFIELD's termination was effective October 12, 2009.

f. Krystal Wood, who is named as a co-conspirator of defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD, has been charged separately and is not named as a defendant herein. Wood was a recovering drug addict who worked for LUDWIKOWSKI at OMP from in or about August 2012 through in or about June 2013. LUDWIKOWSKI hired Wood to work at OMP after Wood's previous employer, Pharmacy Chain 2, terminated Wood from her position as a Pharmacy Technician for "inability to perform." Wood's termination was effective November 14, 2009. Wood and GOLDFIELD met during their overlapping period of employment at Pharmacy Chain 2.

g. As a result of defendant MICHAEL LUDWIKOWSKI's failure to establish sufficient security procedures to limit access to controlled substances, Wood relapsed from her recovery from addiction and returned to abusing controlled substances after she began

working at OMP. Some of the substances Wood abused she obtained from OMP, and sometimes she abused those substances on the premises of OMP.

h. Patrick Clark, who is named as a co-conspirator of defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD, has been charged separately and is not named as a defendant herein. Clark was a drug addict who fed his addiction with oxycodone 30 mg that he obtained fraudulently from LUDWIKOWSKI and GOLDFIELD.

i. After defendant MICHAEL LUDWIKOWSKI opened OMP, Patrick Clark began presenting fraudulent prescriptions for controlled substances at OMP – in his own name, and in the names of others – in order to resell the controlled substances as well as to feed his own drug addiction and the addictions of others. LUDWIKOWSKI and defendant DAVID GOLDFIELD filled Clark's fraudulent prescriptions, knowing of Clark's addiction. Clark's fraudulent prescriptions – which he would present sometimes multiple times a day at OMP or MFP – were often clearly "washed" through a chemical process that would remove the original writing on a prescription that was often written by a physician for a non-controlled substance. This enabled Clark and others, after removing the original writing from a prescription, to rewrite the original prescription for a controlled substance. Clark frequently presented these prescriptions in the names of other individuals in order to be able to fill multiple prescriptions within a thirty-day period. Clark generally paid LUDWIKOWSKI and GOLDFIELD cash to fill his prescriptions.

j. Individual 1, a co-conspirator of defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD who has not been charged and is not named as a defendant herein, was the girlfriend of Patrick Clark. Individual 1 presented fraudulent prescriptions for controlled substances at OMP – in her own name, and in the names of others – both in order to resell the

controlled substances and in order to feed her own drug addiction and the addictions of others. LUDWIKOWSKI and GOLDFIELD filled Individual 1's fraudulent prescriptions, knowing of her addiction. Individual 1's fraudulent prescriptions were often clearly "washed" through the same kind of chemical process that Clark used, in order to remove the original writing on a prescription so that the original prescription could be rewritten for a controlled substance. Individual 1 presented these prescriptions in the names of other individuals in order to be able to fill multiple prescriptions within a thirty-day period. Individual 1 generally paid LUDWIKOWSKI and GOLDFIELD cash to fill her prescriptions.

k. Dontees Jones, who has been separately charged and is not named as a defendant herein, presented fraudulent prescriptions for controlled substances at OMP and MFP to defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD in order to obtain the controlled substances, which he then illegally sold. Jones' fraudulent prescriptions – which he would present sometimes multiple times a week at OMP or MFP –were written on stolen prescription blanks and presented in his own name and the names of numerous other individuals so that Jones could fill multiple prescriptions within a thirty-day period. Jones kept track of these names, and the dates on which he filled prescriptions using them, with the use of hand-written ledgers. Jones generally paid LUDWIKOWSKI and GOLDFIELD cash to fill his prescriptions.

l. Matthew Lawson, who has been separately charged and is not named as a defendant herein, presented fraudulent prescriptions for controlled substances at OMP and MFP to defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD in order to obtain the controlled substances, which he then illegally sold. Lawson's fraudulent prescriptions – which he would present sometimes multiple times a week at OMP or MFP – were typically written on

stolen prescription blanks and presented in his own name and the names of other individuals in order to be able to fill multiple prescriptions within a thirty-day period. Lawson generally paid L UDWIKOWSKI and GOLDFIELD cash to fill his prescriptions.

m. Distributor 1, a large national distributor of pharmaceutical products, acted as the primary supplier of controlled substances, among other products, to defendant MICHAEL L UDWIKOWSKI, OMP, and MFP. Distributor 1 established thresholds, or limits, for the quantity of certain controlled substances that it would supply to pharmacies, including OMP and MFP. When a pharmacy's request for more controlled substances exceeded the threshold that Distributor 1 had established for the pharmacy, Distributor 1's distribution center would ordinarily "omit" the quantity of the requested controlled substance that exceeded the pharmacy's threshold. A pharmacy, however, could request that Distributor 1 elevate the thresholds established for that pharmacy, and a change to the threshold – whether temporary or permanent – could be accomplished if there was sufficient justification for the change. This change could be approved through an internal process at Distributor 1 that included the generation of a threshold change request ("TCR") setting forth, among other things, the quantity of the controlled substance sought to be increased and the justification for the increase. Approval of a TCR, and the resulting increase in the controlled substances threshold, required the approval of one or more individuals in Distributor 1's regulatory affairs department.

n. Individual 2, a witness who has not been charged and is not named as a defendant herein, was a sales representative for Distributor 1 who serviced defendant MICHAEL LUDWIKOWSKI, OMP, and MFP. Individual 2 forwarded LUDWIKOWSKI's repeated requests for increases to the thresholds for the supply of oxycodone to OMP and MFP, to other employees at Distributor 1. Approval of the TCRs enabled the distribution of tens of thousands

of additional dosage units of oxycodone, by LUDWIKOWSKI and defendant DAVID GOLDFIELD, to OMP and MFP and, ultimately, to LUDWIKOWSKI's and GOLDFIELD's customers.

o. Pharmacist 3, a witness who has not been charged and is not named as a defendant herein, worked as a pharmacist at MFP in the employment of defendant MICHAEL LUDWIKOWSKI.

p. Doctor 1, who has not been charged and is not named as a defendant herein, prescribed oxycodone 30 mg to individuals who filled their prescriptions for that medication at OMP or MFP.

The Controlled Substances Act and Federal

Regulations Governing the Dispensing of Schedule II Controlled Substances

2. 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.

3. 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."

4. 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."

5. The CSA categorized certain controlled substances in five schedules based upon, 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 have led to severe psychological or physical dependence. *See* 21 U.S.C. § 812(b)(2).

6. Oxycodone was a narcotic analgesic (*i.e.*, pain killer) that was similar to morphine and was classified as a Schedule II controlled substance, sometimes prescribed under the brand name OxyContin. *See* 21 C.F.R. § 1308.12(b)(1)(xiii). Oxycodone was used to treat severe pain, and, even if taken only in prescribed amounts – and even in amounts as low as 10 milligrams – could cause physical and psychological dependence when taken for a long time. Oxycodone was used in pain relief drugs in varying dosage strengths, including 5, 10, 30, 40, 60, and 80 milligram amounts. For example, Percocet, which contained oxycodone and acetaminophen, was manufactured by numerous pharmaceutical companies under the following brand names: Endocet, Roxicet, Roxilox and Tylox. Percocet was used to treat moderate to moderately severe pain. Users who abused pills containing oxycodone frequently did so by smoking, chewing, dissolving, injecting, or crushing the pills and snorting the substance.

7. Morphine was a narcotic analgesic that was classified as a Schedule II controlled substance prescribed to relieve moderate to severe pain. *See* 21 C.F.R. § 1308.12(b)(1)(ix). Like other Schedule II controlled substances, morphine had a high potential for abuse.

8. Methadone was a narcotic analgesic that was similar to morphine and was classified as a Schedule II controlled substance prescribed to relieve severe pain. *See* 21 C.F.R. § 1308.12(c)(15). Like other Schedule II controlled substances, methadone had a high potential for abuse.

9. Fentanyl was a narcotic analgesic that was similar to morphine and was classified as a Schedule II controlled substance prescribed to relieve severe pain. *See* 21 C.F.R. § 1308.12(c)(9). Like other Schedule II controlled substances, fentanyl had a high potential for abuse.

10. The United States Attorney General had the authority to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances. *See* 21 U.S.C. § 821. 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. *See* 21 U.S.C. § 822.

11. 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, relating to prescriptions, which included the following provisions:

a. Section 1306.04(a) provided that "[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."

b. Furthermore, Section 1306.04(a) made clear that both the prescribing practitioner and the pharmacist who filled a prescription bore responsibility in ensuring that prescriptions for controlled substances were issued and filled for legitimate medical purposes and in the usual course of professional practice: "[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."

c. Section 1306.04(a) also made clear that a purported prescription that was not issued in the usual course of professional treatment was not a "prescription" at all, and could subject a prescriber or pharmacist knowingly issuing or filling it to criminal penalties.

d. Section 1306.05 established basic requirements for the content of a valid controlled substance prescription, 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." 21 C.F.R. § 1306.05(a). In addition, where a prescription was written for "detoxification treatment," or "maintenance treatment," such as in the case of a drug addict whom the physician sought to wean off of a controlled substances addiction, the prescription was to bear a particular identification number assigned by the Administrator of the DEA, or contain a written notice that the practitioner was acting under a recognized good faith exception. 21 C.F.R. § 1306.05(b).

e. 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."

f. Section 1306.11 stated that a pharmacist may only dispense a Schedule II controlled substance pursuant to a written prescription signed by the practitioner, unless the pharmacist is dispensing the substance in an emergency situation defined by Title 21, Code of Federal Regulation, Section 290.10, and with the prescriber's oral authorization. Furthermore, such emergency dispensing must be limited to an amount adequate to treat the patient during the emergency period, the prescription must be immediately reduced to writing by the pharmacist

and contain all necessary information but for the practitioner's signature, and the prescriber must provide a written prescription within 7 days after the oral authorization that has written on its face "Authorization for Emergency Dispensing." In addition, the pharmacist must notify the nearest office of the DEA if the prescribing individual practitioner fails to deliver a written prescription to the pharmacist, and failure of the pharmacist to do so voids the authority to dispense without a written prescription of a prescribing individual practitioner under such an emergency scenario.

g. 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.

h. 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."

i. In addition, Section 1306.13(b) permitted partially filling a Schedule II controlled substance prescription for a patient in a Long Term Care Facility ("LTCF") (defined as "a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients," 21 C.F.R. § 1300.01), or for a patient diagnosed with a

terminal illness. Under such circumstances, "[b]oth the pharmacist and the prescribing practitioner ha[d] a corresponding responsibility to assure that the controlled substance [wa]s for a terminally ill patient." In addition, a pharmacist partially filling a prescription under these circumstances was required to record on the prescription if the patient was "terminally ill" or a "LTCF patient." A prescription partially filled without such notations would have been "deemed to have been filled in violation of the [CSA]."

12. Every registered pharmacy and pharmacist engaged 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. 21 U.S.C. § 827(a)(3); 21 C.F.R. §§ 1304.04(h), 1304.11(a).

13. Federal regulations 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. *See* 21 C.F.R. § 1301.76(b).

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

The New Jersey Pharmacy Practice Act

14. 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." N.J. Stat. § 45:14-40.

15. 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. *See* N.J. Stat. § 45:14-48a(1), (3), (8), (10).

16. 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." N.J. Stat. § 45:14-41.

17. The NJPPA defined a Drug Utilization Review ("DUR") as, 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." N.J. Stat. § 45:14-41.

18. 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." Finally, the NJPPA 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 but shall be based on professional experience, knowledge or available reference materials." N.J. Stat. § 45:14-66.

19. 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, including the patient's name and address; the name, strength, and quantity of the drug dispensed; and any significant individual patient history. N.J. Stat. Ann. § 45:14-68.

The New Jersey Pharmacy Board's Regulations Governing Pharmacists

20. Pursuant to the NJPPA, the Board also promulgated administrative regulations governing the practice of pharmacy in New Jersey (the "Regulations"). *See* N.J. Admin. Code § 13:39-1.1. The Regulations included the requirement that pharmacists comply with all rules, regulations and laws governing the practice of pharmacy. *See* N.J. Admin. Code § 13:39-3.11.

21. The Regulations prohibited the practice of entering into an agreement with a physician to "steer" patients to a particular pharmacy. Specifically, the Regulations provided that "[i]t shall be unlawful for a pharmacist to enter into an arrangement with a health care practitioner who is licensed to issue prescriptions for the purpose of directing or diverting patients to or from a specified pharmacy or restraining in any way a patient's freedom of choice to select a pharmacy." N.J. Admin. Code § 13:39-3.10.

22. 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," N.J. Admin. Code § 13:39-6.2(f), 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 and sanitary 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."

23. Like the NJPPA, the Regulations required pharmacists to conduct a DUR. *See* N J. Admin. Code § 13:39-7.20. 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."

24. The Regulations did not require pharmacists to fill all prescriptions presented to them. Rather, 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 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." N.J. Admin. Code § 13:39-7.13.

The New Jersey Prescription Monitoring Program

25. Under New Jersey Statute 45:1-45, New Jersey pharmacies had 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, the dispensing of controlled dangerous substances in New Jersey, including Schedule II controlled substances such as oxycodone, morphine, methadone, and fentanyl. The NJ PMP maintained 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, among other information.

26. 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 controlled substances prescriptions, and to detect possible drug-seeking behavior and diversion of controlled substances.

The Conspiracy

27. From in or about March 2008 through in or about August 2013, in Burlington County, in the District of New Jersey and elsewhere, defendants

MICHAEL LUDWIKOWSKI and
DAVID GOLDFIELD

did knowingly and intentionally conspire and agree with each other, with Krystal Wood, with Patrick Clark, with Individual 1, and with others, to distribute and to dispense, outside the usual course of professional practice and not for a legitimate medical purpose, and to possess with intent to distribute and to dispense, outside the usual course of professional practice and not for a legitimate medical purpose, mixtures and substances containing detectable amounts of Schedule II controlled substances, including oxycodone, morphine, methadone, and fentanyl, contrary to Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

Manner and Means

28. It was part of the conspiracy that defendant MICHAEL LUDWIKOWSKI, as the Pharmacist-in-Charge of OMP, and as the owner and operator of OMP and MFP, purchased significant quantities of oxycodone products from Distributor 1 in order to satisfy the demand for large quantities of oxycodone 30 mg tablets from customers who LUDWIKOWSKI knew to be fraudulently obtaining them. LUDWIKOWSKI knew that once filled, the oxycodone provided to his customers, some of whom he knew to be drug addicts, would not be used for any legitimate medical purpose.

29. It was further part of the conspiracy that defendant DAVID GOLDFIELD, while employed by defendant MICHAEL LUDWIKOWSKI, filled prescriptions for oxycodone that he knew to be fraudulent. GOLDFIELD knew that once filled, the oxycodone provided to his customers, some of whom he knew to be drug addicts, would not be used for any legitimate medical purpose.

30. It was further part of the conspiracy that defendant MICHAEL LUDWIKOWSKI repeatedly requested and received increases to the thresholds of oxycodone supplied by Distributor 1 to OMP and MFP in order for him and defendant DAVID GOLDFIELD to sell the oxycodone to customers for no legitimate medical purpose.

31. It was further part of the conspiracy that Patrick Clark presented numerous fraudulent prescriptions to defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD to feed Clark's own addiction, for distribution by Clark to others in exchange for payment, and for distribution by Clark to others for their own personal use. For instance, on or about Friday, April 6, 2012, Clark sent a text message to LUDWIKOWSKI's personal cellular telephone, seeking oxycodone 30 mg because, as Clark stated in the text message, he did not want himself "or [Individual 1] 2 b sic" – *i.e.*, to suffer from withdrawal symptoms due to the inaccessibility of oxycodone. In response, LUDWIKOWSKI said he could not fill the prescription that day, but could perhaps fill it the next day. On Monday, April 9, 2012, LUDWIKOWSKI caused a prescription for oxycodone 30 mg to be filled in the name of Clark's father – a name that Clark used repeatedly to fill fraudulent prescriptions at OMP.

32. It was further part of the conspiracy that, following Patrick Clark's arrest by the Medford Police Department on or about August 23, 2013, Clark asked his girlfriend, Individual 1. to notify defendant MICHAEL LUDWIKOWSKI of law enforcement's scrutiny of

LUDWIKOWSKI. Individual 1 did so by sending a text message to LUDWIKOWSKI's personal cellular telephone and notifying him that a Special Agent from the Federal Bureau of Investigation ("FBI") had asked about LUDWIKOWSKI.

33. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD worked together to fill numerous fraudulent prescriptions that Dontees Jones and Matthew Lawson – whom LUDWIKOWSKI and GOLDFIELD referred to, respectively, as "Darryl 1," and "Darryl 2" – presented in the names of countless other individuals – males and females, some of them real names and others fictitious names – sometimes multiple times a week.

34. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD worked together to fill numerous fraudulent prescriptions that other individuals presented at OMP or MFP.

35. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD charged Patrick Clark, Individual 1, Dontees Jones, Matthew Lawson, and others, $190 dollars for a bottle containing between 100 and 120 oxycodone 30 mg tablets, and these individuals generally paid for their prescriptions with cash. In addition, LUDWIKOWSKI and GOLDFIELD accepted gifts of various kinds from Patrick Clark, Individual 1, Dontees Jones, and Matthew Lawson in exchange for filling fraudulent prescriptions. For instance, in exchange for filling fraudulent prescriptions, LUDWIKOWSKI accepted alcohol from Clark and Individual 1, and GOLDFIELD accepted pornography from Clark.

36. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD failed to take steps to determine the validity of the fraudulent prescriptions for oxycodone 30 mg that customers presented to them.

37. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD filled prescriptions for oxycodone 30 mg that even non-pharmacists would recognize as self-evidently "washed," and fraudulent.

38. It was further part of the conspiracy that when people around them voiced concerns about some of their clientele, defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD disregarded these concerns. For instance, when Krystal Wood raised a concern regarding a prescription that she believed to have clearly been "bleached," GOLDFIELD told her to fill it any way.

39. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD did not report to the Medford Police Department or the DEA the numerous instances in which Patrick Clark, Individual 1, Dontees Jones, Matthew Lawson, and others presented fraudulent prescriptions for oxycodone 30 mg.

40. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD did not report to DEA the theft or loss of oxycodone 30 mg.

41. It was further part of the conspiracy that defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD distributed and dispensed oxycodone 30 mg and other Schedule II controlled substances, including methadone and fentanyl, contrary to the CSA and federal regulations governing the dispensing of Schedule II controlled substances, and

contrary to the NJPPA, and state regulations governing the practice of pharmacy, including in the following ways:

a. Defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD distributed and dispensed oxycodone 30 mg and other Schedule II controlled substances, including methadone and fentanyl, prior to the customer presenting a prescription for those substances.

b. Defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD partially filled prescriptions for oxycodone 30 mg and other controlled substances over a period extending more than 72 hours without obtaining a new prescription.

c. Defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD failed to maintain, on a current basis, a complete and accurate record of each controlled substance received, sold, delivered, or otherwise disposed.

d. Defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD failed to conduct DURs in order to assess the appropriateness of continued dispensing of controlled substances to customers – whether the patient's name listed on a prescription was a real or fictitious name – even when the person presenting the prescription was not the same as the patient named on the prescription.

e. Defendants MICHAEL LUDWIKOWSKI and DAVID GOLDFIELD failed to use the NJ PMP data accessible to them in order to detect diversion of controlled substances and drug seeking by addicts.

42. It was further part of the conspiracy that defendant MICHAEL LUDWIKOWSKI secured the agreement of one or more physicians to steer their patients to LUDWIKOWSKI's pharmacies. For example:

a. On or about January 11, 2013, defendant MICHAEL LUDWIKOWSKI sent a text message from his cellular telephone to Pharmacist 3. The message stated, "Any dinner plans with that doctor?"

b. On or about January 11, 2013, following the text message that defendant MICHAEL LUDWIKOWSKI sent to Pharmacist 3, Pharmacist 3 sent a text message to LUDWIKOWSKI stating, "I talked to [Doctor 1] and he is going to direct all of his patients to us he is the pain doc in Cherry hill"

c. On or about January 27, 2013, defendant MICHAEL LUDWIKOWSKI received a voicemail message from Individual 3, who identified himself by name as a patient of Doctor 1, whom he visited every month, and that he was looking for a pharmacy to serve him every month. Individual 3 left his telephone number for a return call.

d. On or about January 27, 2013, defendant MICHAEL LUDWIKOWSKI sent a text message to Pharmacist 3, stating, "Got a call from [Doctor 1] patient looking to come in Monday. [Individual 3's telephone number] if you want to call him back."

e. Starting on or about February 13, 2013 and continuing through May 2013, Individual 3 began filling prescriptions for oxycodone 30 mg, methadone 10 mg, and sometimes also oxycodone 15 mg, at OMP or MFP.

f. On or about May 19, 2013, defendant MICHAEL LUDWIKOWSKI received a voicemail message from Individual 4, who identified himself by name as a patient of Doctor 1. Individual 4 stated that he received LUDWIKOWSKI's number from Doctor 1, and that he was living in Pennsylvania and needed to fill his prescription but was "in a little bit of a pickle" because he had been unable to fill the prescription in Pennsylvania. Individual 4 further stated that he had heard that LUDWIKOWSKI did not have a problem filling Doctor 1's

prescriptions. Starting on or about May 21, 2013 and continuing through August 2013, Individual 4 began filling prescriptions for oxycodone 30 mg, and sometimes also morphine, at OMP or MFP.

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

COUNT 2

[21 U.S.C. § 856 – Maintaining a Premises for the Illegal Distribution of a Controlled Substance]

1. Paragraphs 1 through 26 and 28 through 42.f of Count 1 of this Indictment are realleged and incorporated as if set forth in full herein.

2. From in or about March 2008 through in or about August 2013, in Burlington County, in the District of New Jersey and elsewhere, defendants

MICHAEL LUDWIKOWSKI and
DAVID GOLDFIELD

did knowingly and intentionally manage and control a place – namely, Olde Medford Pharmacy, located in Medford, New Jersey – as owners, lessees, agents, employees, occupants, and mortgagees, and did knowingly and intentionally rent, lease, profit from, and make available for use, that place for the purpose of unlawfully storing and distributing a controlled substance.

In violation of Title 21, United States Code, Section 856.

COUNT 3

[21 U.S.C. § 856 – Maintaining a Premises for the Illegal Distribution of a Controlled Substance]

1. Paragraphs 1 through 26 and 28 through 42.f of Count 1 of this Indictment are realleged and incorporated as if set forth in full herein.

2. From in or about July 2012 through in or about August 2013, in Burlington County, in the District of New Jersey and elsewhere, defendants

MICHAEL LUDWIKOWSKI and
DAVID GOLDFIELD

did knowingly and intentionally manage and control a place – namely, Medford Family Pharmacy ("MFP"), located in Medford, New Jersey – as owners, lessees, agents, employees, occupants, and mortgagees, and did knowingly and intentionally rent, lease, profit from, and make available for use, that place for the purpose of unlawfully storing and distributing a controlled substance.

In violation of Title 21, United States Code, Section 856.

COUNTS 4-9

[21 U.S.C. §§ 841, 846; 18 U.S.C. § 2 – Illegal Distribution and Dispensing, and Possession with Intent to Distribute and Dispense, a Controlled Substance; Attempt; Aiding and Abetting]

1. Paragraphs 1 through 26 and 28 through 42.f of Count 1 of this Indictment are realleged and incorporated as if set forth in full herein.

2. On or about the dates set forth below, in Burlington County, in the District of New Jersey and elsewhere, defendant

MICHAEL LUDWIKOWSKI

did knowingly and intentionally distribute and dispense, attempt to distribute and dispense, and aid and abet the distribution and dispensing – outside the usual course of professional practice and not for a legitimate medical purpose – of a mixture and substance containing a detectable amount of oxycodone, a Schedule II controlled substance, each instance constituting a separate count:

Count	Date	Prescription Number	Substance	Quantity (pills)
4	4/9/12	N44249	Oxycodone 30 mg	120
5	8/27/12	N50013	Oxycodone 30 mg	120
6	9/10/12	N50521	Oxycodone 30 mg	120
7	11/17/12	N126	Oxycodone 30 mg	120
8	11/21/12	N53655	Oxycodone 30 mg	120
9	11/28/12	N193	Oxycodone 30 mg	120

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

COUNTS 10-15

[21 U.S.C. §§ 841, 846; 18 U.S.C. § 2 – Illegal Distribution and Dispensing, and Possession with Intent to Distribute and Dispense, a Controlled Substance; Attempt; Aiding and Abetting]

1. Paragraphs 1 through 26 and 28 through 42.f of Count 1 of this Indictment are realleged and incorporated as if set forth in full herein.

2. On or about the dates set forth below, in Burlington County, in the District of New Jersey and elsewhere, defendant

DAVID GOLDFIELD

did knowingly and intentionally distribute and dispense, attempt to distribute and dispense, and aid and abet the distribution and dispensing – outside the usual course of professional practice and not for a legitimate medical purpose – of a mixture and substance containing a detectable amount of oxycodone, a Schedule II controlled substance, each instance constituting a separate count:

Count	Date	Prescription Number	Substance	Quantity (pills)
10	8/30/12	N50165	Oxycodone 30 mg	120
11	8/31/12	N50192	Oxycodone 30 mg	120
12	1/10/13	N55835	Oxycodone 30 mg	120
13	1/17/13	N56269	Oxycodone 30 mg	120
14	1/25/13	N56604	Oxycodone 30 mg	120
15	2/7/13	N57244	Oxycodone 30 mg	120

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

COUNT 16

[21 U.S.C. § 843(b) – Use of a Telephone to Further a Drug Offense]

1. Paragraphs 1 through 26 and 28 through 42.f of Count 1 of this Indictment are incorporated as if set forth in full herein.

2. On or about April 6, 2012, in Burlington County, in the District of New Jersey and elsewhere, defendant

MICHAEL LUDWIKOWSKI

did knowingly and intentionally use, and cause to be used, a communication facility, that is, a telephone, in committing, causing and facilitating the commission of any act constituting a felony drug offense, including: (1) the conspiracy charged in Count 1 of this Indictment, and (2) the distribution and dispensing, attempted distribution and dispensing, and aiding and abetting of the distribution and dispensing of a Schedule II controlled substance – outside the usual course of professional practice and not for a legitimate medical purpose – on April 9, 2012 that is charged in Count 4 of this Indictment.

In violation of Title 21, United States Code, Section 843(b).

FORFEITURE ALLEGATIONS

1. As a result of the violations of Title 21, United States Code, Sections 846, 841(a)(1), 843(b), and 856 set forth in Counts 1 through 16 of this Indictment, defendants

MICHAEL LUDWIKOWSKI and
DAVID GOLDFIELD

shall forfeit to the United States of America, all right, title, and interest in:

a. Any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such violation; and

b. Any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

Substitute Assets Provision

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant(s):

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; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of defendants up to the value of the property subject to forfeiture.

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

A TRUE BILL:

PAUL J. FISHMAN
United States Attorney

GRAND JURY FOREPERSON

CASE NUMBER: 16-

United States District Court
District of New Jersey

UNITED STATES OF AMERICA

v.

MICHAEL LUDWIKOWSKI and
DAVID GOLDFIELD

INDICTMENT FOR

21 U.S.C. § 846
21 U.S.C. § 841(a)(1) and (b)(1)(C)
21 U.S.C. § 856
21 U.S.C. § 843(b)
18 U.S.C. § 2

Notice of Forfeiture

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JASON M. RICHARDSON
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