18 MAG 8584

Approved: _____
Nicolas Roos / Stephanie Lake
Assistant United States Attorneys

Before: HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA	:	**SEALED COMPLAINT**
- v. -	:	Violations of 21 U.S.C. §§ 846, 841(a)
ANTHONY PIETROPINTO,	:	
Defendant.	:	COUNTY OF OFFENSE: NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

KENNETH R. MCGRAIL, being duly sworn, deposes and says that he is a Special Agent with the Drug Enforcement Administration ("DEA"), and charges as follows:

COUNT ONE
(Conspiracy to Distribute Narcotics)

1. From at least in or about 2013, up to and including in or about 2017, in the Southern District of New York and elsewhere, ANTHONY PIETROPINTO, the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate and agree, together and with each other, to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that ANTHONY PIETROPINTO, the defendant, and others known and unknown, would and did distribute, dispense, possess with intent to distribute and dispense, and cause to be distributed and dispensed, a controlled substance outside the scope of professional practice and not for a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that ANTHONY PIETROPINTO, the defendant, conspired to distribute and dispense, possess with intent to distribute and dispense, and caused to be distributed and dispensed, outside the scope of professional practice and not for a legitimate medical purpose, was a quantity of mixtures and substances containing a detectable amount of oxycodone, in violation of 21 U.S.C. § 841(b)(1)(C).

(Title 21, United States Code, Section 846.)

COUNTS TWO AND THREE
(Narcotics Distribution)

4. On or about the dates set forth below, in the Southern District of New York and elsewhere, ANTHONY PIETROPINTO, the defendant, intentionally and knowingly distributed, dispensed, possessed with the intent to distribute and dispense, and caused to be distributed and dispensed a controlled substance, outside the scope of professional practice and not for a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

Count	Date
2	July 6, 2016
3	October 11, 2017

5. The controlled substance involved in the offenses was a quantity of mixtures and substances containing a detectable amount of oxycodone, in violation of Title 21, United States Code, Sections 841(a) and 841(b)(1)(C).

(Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C))

6. The bases for my knowledge and the foregoing charges are, in part, as follows:

7. I am a Special Agent with DEA. This Affidavit is based upon my personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement agents and other individuals. Because this Affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Introduction

8. Since at least October 2013, ANTHONY PIETROPINTO, the defendant, a state-licensed psychiatrist practicing in New York City, has unlawfully distributed many thousands of thirty-milligram pills of the Schedule II controlled substance oxycodone, as well as other controlled substances, to over two hundred patients. As described below, PIETROPINTO, who saw purported patients in the evening at an office he rented on Fifth Avenue in Manhattan (the "Fifth Avenue Office"), wrote thousands of prescriptions for large quantities of oxycodone in exchange for $50 to $100 in cash per visit, including to co-conspirators and other individuals whom PIETROPINTO knew had no legitimate medical need for them, including drug-addicted individuals. At least two of PIETROPINTO's purported patients overdosed on drugs during the time period in which PIETROPINTO prescribed them oxycodone. PIETROPINTO furthermore instructed at least one purported patient -- a co-conspirator who was reselling the pills that PIETROPINTO prescribed for street value - not to fill the prescriptions at large chain pharmacies, such as CVS and Walgreens, because pharmacists at those pharmacies would call and ask PIETROPINTO why he was writing prescriptions for pain medication along with psychiatric medication, and why he was writing prescriptions for such a large number of pills. PIETROPINTO, by writing medically unnecessary prescriptions, and his co-conspirators, who filled those prescriptions, caused thousands of oxycodone pills and other controlled substances to be sold to addicted individuals on the street.

Background on Oxycodone and Regulations Governing its Distribution

9. Based on my training and experience regarding oxycodone, its uses, the regulations and professional standards governing its distribution, and its potential for abuse, as well as my experience from being involved in other law enforcement matters relating to the diversion of controlled substances, including oxycodone, I have learned, among other things, the following:

a. Oxycodone is a highly addictive, narcotic-strength opioid used to treat severe and chronic pain conditions, such as post-operative pain, serious back and orthopedic injuries, as well as pain associated with certain forms of cancer and other terminal illnesses. Oxycodone can be legitimately obtained from most pharmacies with a prescription

written by a treating physician, and is typically dispensed in five- to thirty-milligram pills to patients.

b. Alprazolam, commonly known by the brand name Xanax, is a potent and addictive sedative used to treat anxiety disorders. When combined with oxycodone or buprenorphine, alprazolam may enhance an individual's "high," but also substantially increases the risk of overdose.

c. Because of its addictive qualities and potential for abuse, the distribution of oxycodone is heavily regulated. Physicians and other healthcare professionals must register and be approved by the DEA and New York State licensing authorities in order to prescribe oxycodone lawfully. Furthermore, federal and state regulations require that, before prescribing oxycodone, physicians must ensure that the prescription is issued for a legitimate medical purpose and in the usual course of generally accepted medical practice. *See* 21 C.F.R. § 1306.04. The Centers for Disease Control and Prevention and state regulations recommend various ways that physicians may do so, including among other things, by testing patients' urine to ensure that they are taking their prescriptions and not abusing other controlled substances, conducting medical histories and physical examinations, assessing addiction risk factors for every patient, and developing a treatment plan to reduce a patient's dependence on the oxycodone. *See, e.g.*, Centers for Disease Control and Prevention, Guideline for Prescribing Opioids for Chronic Pain, 2016; N.Y. Comp. Codes R. & Regs. tit. 10 § 80.63. Pursuant to federal regulations, prescriptions for oxycodone cannot be refilled until a patient who has exhausted his or her initial prescription has visited his or her doctor again. *See* 21 C.F.R. § 1306.12.

d. Because oxycodone is highly addictive and available pursuant only to a prescription written by a licensed healthcare professional, oxycodone prescriptions have enormous cash value to drug dealers who sell oxycodone pills on the street for thousands of dollars.

e. At all times relevant to this Complaint, thirty-milligram oxycodone pills, which are popular amongst street-level drug dealers, had a street value of approximately $30 per tablet in New York City, with prices ranging even higher in other parts of the country.

f. From my training and experience investigating diversion schemes, I know that doctors who engage in illegal

diversion activities often write medically unnecessary prescriptions for large quantities of oxycodone in exchange for cash payments at the time of the visit. In such cases, the doctors may charge cash for "doctor visits" that usually involve little physical examination and result in the issuance of a prescription for large doses of oxycodone, typically in thirty-milligram pills. Furthermore, to protect against the possibility of detection by law enforcement and to make it seem like the prescriptions are legitimate, doctors engaged in diversion may ask purported patients for medical documentation, such as MRI reports, purporting to document injuries, but which are typically false reports or reports for individuals other than the patient.

The Defendant's Distribution of Oxycodone

10. During the course of this investigation, I have spoken to several cooperating witnesses who visited ANTHONY PIETROPINTO, the defendant, at the Fifth Avenue Office and elsewhere, and who received controlled substance prescriptions from him. Specifically, based on my conversations with one of the cooperating witnesses ("CW-1"),[1] I have learned the following, in substance and in part:

a. Beginning in or about 2014, CW-1, who was arrested for selling oxycodone pills as recently as November 2017, began obtaining controlled substance prescriptions from PIETROPINTO. At the first visit, PIETROPINTO asked CW-1, in sum and substance, what CW-1 wanted, and CW-1 told PIETROPINTO that he wanted oxycodone, alprazolam, and amphetamine salts (known by the brand name Adderall). PIETROPINTO did not perform a physical examination on CW-1, did not test CW-1's urine, and did not inquire about CW-1's medical history aside from requesting an MRI and making general inquiries about how CW-1 was feeling. Nonetheless, PIETROPINTO wrote CW-1 prescriptions for oxycodone, alprazolam, and amphetamine salts. On a monthly basis thereafter, PIETROPINTO prescribed for CW-1 180 thirty-milligram oxycodone pills, 120 amphetamine salts pills, and 150 alprazolam pills. PIETROPINTO informed CW-1 that PIETROPINTO knew he should not be prescribing the combination of medications he prescribed CW-1. PIETROPINTO also informed CW-1 that, after

[1] CW-1 has not yet been charged with a crime, but is cooperating in the hopes of receiving leniency at sentencing following an anticipated guilty plea for his own conduct. CW-1's criminal history includes past convictions for controlled substance and weapons offenses and burglary. Some of the information CW-1 has provided has been corroborated by other evidence and deemed reliable.

PIETROPINTO retired, CW-1 would need to go to two doctors to get the combination of pills PIETROPINTO had been prescribing, because most physicians would not prescribe them together. Based on my training and experience, I know that the combination of oxycodone and alprazolam, which are two parts of what is commonly described as the "Holy Trinity" of drugs, substantially increases the risk of opioid-induced respiratory depression and death.

b. During each of CW-1's appointments at PIETROPINTO's office, which were brief, PIETROPINTO never conducted a physical examination of CW-1. During some visits, CW-1 left the examination room and used the restroom while waiting for PIETROPINTO to finish writing out the prescriptions.

c. PIETROPINTO told CW-1 that he only accepted cash as payment for visits and he did not take insurance. PIETROPINTO initially charged CW-1 $50 cash per visit, and later increased the price to $100 per visit. After paying PIETROPINTO, CW-1 observed PIETROPINTO place cash payments in his pants pocket and into a roll of cash in his sock.

d. PIETROPINTO instructed CW-1 not to fill the prescriptions at large chain pharmacies, such as CVS and Walgreens, because pharmacists at those pharmacies would call and ask PIETROPINTO why he was writing prescriptions for pain medication along with psychiatric medication, and why he was writing prescriptions for such a large number of pills.

e. Multiple relatives of CW-1 also received prescriptions for oxycodone and other controlled substances from PIETROPINTO. For example, throughout the period CW-1 received prescriptions from PIETROPINTO, CW-1's spouse (the "Spouse") also received prescriptions for controlled substances from PIETROPINTO. From time to time, and during one period that spanned approximately five months, the Spouse did not visit PIETROPINTO's office. Nonetheless, during that time period, PIETROPINTO gave CW-1 prescriptions written to the Spouse for oxycodone, alprazolam, and amphetamine salts during CW-1's office visits.

f. Additionally, another one of CW-1's relatives ("Patient-1"), who had been a purported patient of PIETROPINTO longer than CW-1, also received prescriptions for controlled substances. At various times while Patient-1 was a patient of PIETROPINTO, Patient-1 used heroin and went to appointments with PIETROPINTO while visibly high. PIETROPINTO, however, continued

to prescribe oxycodone pills to Patient-1. In fact, during the period PIETROPINTO prescribed oxycodone to Patient-1, he also prescribed Patient-1 naloxone, a medication used to block the effects of opioids, especially in overdoses, which further indicates that PIETROPINTO was aware that Patient-1 was addicted to opioids. In or about May 2017, Patient-1 overdosed on heroin and died. PIETROPINTO subsequently acknowledged to CW-1 that PIETROPINTO was aware of Patient-1's death by overdose. According to CW-1, PIETROPINTO did not alter the amount of oxycodone and other controlled substances he prescribed to CW-1 after Patient-1's overdose.

g. Based on CW-1's observations, CW-1 estimates that PIETROPINTO saw at least approximately ten patients each evening. CW-1 observed patients in PIETROPINTO's waiting room and office who were visibly high on narcotics. CW-1 also knew that some of PIETROPINTO's patients had traveled to the Fifth Avenue Office from outer boroughs, including Staten Island.

h. In or about late 2017, after a television station ran a story (the "News Story") questioning why PIETROPINTO, as a psychiatrist, was prescribing opioids, PIETROPINTO informed CW-1 that PIETROPINTO was retiring. In exchange for cash, PIETROPINTO provided CW-1 and other individuals CW-1 knew with one or two months of extra prescriptions, which were post-dated.

i. CW-1 and CW-1's relatives filled the medically unnecessary prescriptions PIETROPINTO wrote at pharmacies and sold many of the oxycodone pills, and other controlled substances, to addicted individuals on the street.

11. I have spoken to another cooperating witness ("CW-2"),[2] who, along with CW-2's father, was a purported patient of ANTHONY PIETROPINTO, the defendant. From my conversations with CW-2, with other agents who have spoken with CW-2, and my review of a recording of a conversation between CW-2 and PIETROPINTO, I have learned the following, in substance and in part:

a. CW-2 visited PIETROPINTO to obtain prescriptions for oxycodone. CW-2 paid PIETROPINTO $100 per patient per visit to write prescriptions in CW-2's name and in the name of CW-2's father, even though CW-2's father did not visit PIETROPINTO in

[2] CW-2 was arrested for heroin possession by state authorities in or about February 2018 but has not yet been charged with a crime by federal authorities, and is cooperating in the hopes of receiving leniency. Some of the information CW-2 has provided has been corroborated by other evidence and deemed reliable.

person. CW-2 sold the oxycodone pills CW-2 obtained pursuant to the prescriptions written by PIETROPINTO.

b. In or about 2016, CW-2 drove PIETROPINTO from the Fifth Avenue Office to PIETROPINTO's home, and CW-2 covertly recorded their conversation in the car. During the conversation, PIETROPINTO stated and acknowledged, in substance and in part, that he does not keep regular reports of the treatment of his patients, that he had written a post-dated prescription for CW-2, and that he had written prescriptions in the name of CW-2's father although the father was not physically present when the prescriptions were written.

12. From my experience, I know that the post-dating of prescriptions by a doctor allows individuals to obtain multiple prescriptions during one doctor visit, such that they can fill one prescription immediately and additional prescriptions at later dates without having to visit the doctor again, as required by law.

13. I have also spoken to the relative (the "Relative") of a drug-addicted individual ("Patient-2") who was a patient of ANTHONY PIETROPINTO, the defendant. From my conversations with the Relative, I have learned the following, in substance and in part:

a. In or about 2014, Patient-2, who was approximately twenty-two years old at the time, and had no significant health issues or injuries, became a patient of PIETROPINTO. Patient-2's boyfriend recruited Patient-2 to see PIETROPINTO, and both Patient-2 and Patient-2's boyfriend obtained controlled substances prescriptions from PIETROPINTO. Patient-2 and the boyfriend used some of the controlled substances that Patient-2 received, and sold the remaining drugs.

b. After Patient-2 began to see PIETROPINTO, Patient-2 became addicted to oxycodone. With the assistance of Patient-2's family, Patient-2 subsequently entered a drug rehabilitation program for a period of time.

c. In or about 2017, after completing a drug rehabilitation program, Patient-2 overdosed on drugs on two occasions. After the second overdose, the Relative located three prescriptions PIETROPINTO had written for controlled

substances in Patient-2's bedroom, which had been post-dated with a date in the future.

d. The Relative contacted the local media, which ran the News Story, *see supra* ¶ 10(h), about PIETROPINTO and Patient-2's overdose. Based on my review of the publically available News Story, I have learned that PIETROPINTO admitted that Patient-2 was his patient, and that he wrote prescriptions for Patient-2. When asked why he prescribed 180 oxycodone pills to someone who had recently left drug rehabilitation, PIETROPINTO responded "we have an MRI on file."

14. Based on my conversations with other law enforcement agents involved in this investigation (the "Agents") and my review of law enforcement reports, I have learned, among other things, the following:

a. The Agents spoke with a doctor (the "Doctor") who rented the Fifth Avenue Office to ANTHONY PIETROPINTO, the defendant, as well as the Doctor's assistant (the "Assistant").

a. The Doctor rented the Fifth Avenue Office to PIETROPINTO from in or about 2006 until in or about 2016. PIETROPINTO paid the Doctor approximately $200 to $500 per month in rent, and typically used the Fifth Avenue Office to see patients several evenings per week, from 5:00 or 6:00 p.m. until approximately 9:00 p.m.

b. The Doctor and the Assistant observed some of PIETROPINTO's patients. On several occasions, individuals who appeared to be addicted to drugs came to the Fifth Avenue Office and asked the Assistant for PIETROPINTO.

c. The Doctor confronted PIETROPINTO about the problems with his patients. Ultimately, PIETROPINTO stopped renting the Fifth Avenue Office.

15. Based on my review of data from New York's prescription monitoring program, which is maintained by the New York State Bureau of Narcotics Enforcement ("BNE"), and which reflects prescriptions for controlled substances ANTHONY PIETROPINTO, the defendant, wrote for patients, I have learned, among other things, the following:

a. From in or about October 2013 until in or about May 2018, PIETROPINTO wrote prescriptions for over 600,000

oxycodone thirty-milligram tablets to approximately 214 patients.

b. PIETROPINTO prescribed one patient over 12,000 oxycodone pills during this timeframe, or approximately seven tablets per day.

c. PIETROPINTO prescribed CW-1, among other substances, oxycodone, alprazolam, and amphetamine salts pills from in or about October 2013 until in or about December 2017. During this time, PIETROPINTO prescribed CW-1 over 9,000 oxycodone tablets. In October 2017, PIETROPINTO provided CW-1 with multiple prescriptions for oxycodone. Specifically, on or about October 4, 2017, PIETROPINTO wrote CW-1 a prescription for 42 thirty-milligram oxycodone pills. One week later, on or about October 11, 2017, PIETROPINTO wrote CW-1 a prescription for 180 more thirty-milligram oxycodone pills.

d. PIETROPINTO also prescribed the Spouse, among other substances, oxycodone, alprazolam, and amphetamine salts from in or about October 2013 until in or about December 2017. During this time, PIETROPINTO prescribed the Spouse over 8,000 oxycodone tablets.

e. PIETROPINTO prescribed Patient-1, who died of an overdose in May 2017, *see supra* ¶ 10(f), among other substances, oxycodone, alprazolam, and amphetamine salts from in or about October 2013 until in or about April 2017. During this time, PIETROPINTO prescribed Patient-1 over 6,000 oxycodone tablets.

f. PIETROPINTO prescribed Patient-2, among other substances, oxycodone, alprazolam, and amphetamine salts from in or about November 2014 until in or about October 2017. From in or about May 2015 until in or about October 2017, PIETROPINTO prescribed the Patient-2 over 5,000 oxycodone tablets.

g. PIETROPINTO also prescribed Patient-2's boyfriend, among other substances, oxycodone, alprazolam, and amphetamine salts from in or about November 2013 until in or about January 2018. During this time, PIETROPINTO prescribed Patient-2's boyfriend over 5,500 oxycodone tablets.

h. PIETROPINTO prescribed controlled substances to patients with red flags that they were diverting their pills. For instance, PIETROPINTO prescribed controlled substances to multiple patients with the same home address, including four from one household and three from another. PIETROPINTO also

prescribed large quantities of controlled substances to family members and patients who had traveled considerable distances.

16. Based on my comparison of BNE data with New York State criminal justice records, I have learned that on or about July 6, 2016, ANTHONY PIETROPINTO, the defendant, issued a prescription in the name of an individual who was incarcerated at a New York City jail at the time, and therefore could not have visited PIETROPINTO to obtain the prescription in person, or filled such prescription.

17. Based on my review of publically available filings, I have learned that ANTHONY PIETROPINTO, the defendant, claimed to have had financial problems during the time he was prescribing medically unnecessary controlled substances in exchange for cash. Specifically, on or about March 7, 2015, PIETROPINTO filed a voluntary petition for Chapter 7 bankruptcy.

WHEREFORE, deponent prays that a warrant be issued for the arrest of ANTHONY PIETROPINTO, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.

KENNETH R. MCGRAIL
SPECIAL AGENT
DRUG ENFORCEMENT ADMINISTRATION

Sworn to before me this
9th day of October, 2018

HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York