

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
- v. - :
:
DANTE A. CUBANGBANG, :
JOHN F. GARGAN, :
MICHAEL KELLERMAN, and :
LOREN PIQUANT :
a/k/a "Loren Luna," :
:
Defendants. :
:
- - - - - X

SEALED
INDICTMENT

18 Cr.

COUNT ONE
(Conspiracy to Distribute Narcotics)

The Grand Jury charges:

Introduction

1. From at least in or about January 2012, up to and including in or about September 2018, in the Southern District of New York and elsewhere, DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, and others known and unknown, conspired to unlawfully distribute millions of pills of the Schedule II controlled substance oxycodone to individuals the defendants knew had no legitimate medical need for them.

2. At all times relevant to this Indictment, DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, operated out of a pain clinic

located in Queens, New York (the "Clinic"). CUBANGBANG and GARGAN wrote thousands of prescriptions for large quantities of oxycodone to individuals whom CUBANGBANG and GARGAN knew did not need the pills for any legitimate medical purpose. The purported patients instead filled these medically unnecessary prescriptions at pharmacies and sold the oxycodone pills they received to drug dealers, who in turn re-sold the pills on the street to drug-addicted individuals. PIQUANT used her position as a receptionist in the Clinic to purchase for re-sale oxycodone pills from some of these purported patients.

3. In total, from in or around January 2012 up to and including in or around September 2018, DANTE A. CUBANGBANG and JOHN F. GARGAN, the defendants, prescribed more than six million oxycodone pills - the equivalent of approximately 180 kilograms of pure oxycodone.

4. Moreover, as explained in detail below, the Clinic's purported patients were required to pay \$300 in cash for each visit. Between in or about January 2015 and in or about May 2018, CUBANGBANG and GARGAN wrote approximately 19,000 oxycodone prescriptions for their purported patients. Accordingly, during this three-and-a-half-year period, the Clinic generated approximately \$5.7 million in patient fees alone. CUBANGBANG and

others deposited some of the cash from these fees into bank accounts, and then used these funds to operate the Clinic, to pay GARGAN to work at the Clinic and recruit more purported patients, and to continue their illegal distribution of oxycodone.

5. During this same timeframe, from in or around January 2012 up to and including in or around September 2018, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, perpetrated a scheme to defraud Medicare, Medicaid, and other insurance providers by writing prescriptions for medically unnecessary oxycodone pills and ordering medically unnecessary urinalysis tests. These prescriptions and orders in turn caused pharmacies and third-party providers of diagnostic tests to bill and receive payments from Medicare, Medicaid, and other insurance providers for pills and tests that were not medically necessary.

Background on Oxycodone and the Regulations Governing its
Distribution

6. 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 to patients in five- to thirty-milligram pills.

7. 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 lawfully prescribe oxycodone. 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 that physicians do so by, among other things, ordering urinalysis tests to ensure that patients 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.

8. 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. At all times relevant to this Indictment, thirty-milligram oxycodone pills, which are popular among street-level drug dealers, had a street value of approximately \$30 per pill in New York City, with prices ranging even higher in other parts of the country. Thus, a single thirty-day prescription for 180 thirty-milligram pills of oxycodone could net a street-level dealer in New York City \$5,400 in cash or more.

The Scheme to Distribute Oxycodone

9. Over at least six years, between approximately January 2012 and September 2018, DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, prescribed millions of medically unnecessary oxycodone pills to purported patients, who then sold the pills for ultimate distribution to drug-addicted individuals on the street.

10. The scheme was operated from the Clinic located in Queens, New York, which was run by DANTE A. CUBANGBANG, the

defendant. At all times relevant to this Indictment, CUBANGBANG was a state licensed physician specializing in pain medicine, physical medicine, and rehabilitation who was authorized to prescribe controlled substances in New York State.

11. At all times relevant to this Indictment, JOHN F. GARGAN, the defendant, was an employee of the Clinic. GARGAN was a state certified Nurse Practitioner with a specialty practice area of "Family Health." GARGAN was authorized to prescribe controlled substances in New York State, but only for patients within GARGAN's specialty practice area.

12. At all times relevant to this Indictment, MICHAEL KELLERMAN, the defendant, served as the office manager for the Clinic. In this role, among other things, KELLERMAN acted as a "gatekeeper" for the Clinic, collecting cash payments and handling profits from the illegal narcotics business. KELLERMAN also created and maintained medical records in order to make it appear that the Clinic was a legitimate medical practice.

13. At all times relevant to this Indictment, LOREN PIQUANT, a/k/a "Loren Luna," was employed at the Clinic. PIQUANT also served as a "crew chief" by buying oxycodone pills for resale purposes from the Clinic's purported patients.

14. A review of New York State Bureau of Narcotic Enforcement ("BNE") data between in or about January 2012 and in or about March 2018, shows that, during this nearly six-year period, DANTE A. CUBANGBANG, the defendant, prescribed a total of approximately 4.6 million oxycodone pills, and JOHN F. GARGAN, the defendant, prescribed a total of approximately 1.6 million oxycodone pills. Accordingly, over about six years, the Clinic prescribed approximately 6.2 million oxycodone pills.

15. Between in or about December 2014 and in or about December 2017 (a period of about three years), 3.4 million of the oxycodone pills prescribed by DANTE A. CUBANGBANG and JOHN F. GARGAN, the defendants, were paid for by Medicare and Medicaid. This volume of oxycodone prescriptions marks the Clinic as an extreme outlier in New York State. By comparison, the next four highest prescribers of oxycodone pills paid for by Medicare and Medicaid over this period was approximately 1.6 million, 1.2 million, 970,000, and 870,000 oxycodone pills, respectively. In short, CUBANGBANG and GARGAN prescribed more than twice as many oxycodone pills that were paid for by Medicare and Medicaid than the next highest prescriber in New York State.

16. The Clinic was also an outlier in prescribing thirty-milligram oxycodone pills, the most marketable pills for

re-sale on the street. Between in or about December 2014 and in or about December 2017, DANTE A. CUBANGBANG and JOHN F. GARGAN, the defendants, prescribed almost 3.3 million thirty-milligram oxycodone pills that were paid for by Medicare and Medicaid (accounting for about 96% of all oxycodone pills that they prescribed). By comparison, the next four highest prescribers of thirty-milligram oxycodone pills paid for by Medicare and Medicaid over this three year period prescribed approximately 930,000, 650,000, 590,000, and 570,000 oxycodone pills, respectively. In short, CUBANGBANG and GARGAN prescribed more than three times as many thirty-milligram oxycodone pills that were paid for by Medicare and Medicaid as the next highest prescriber in New York State.

17. The prescribing data also showed that the Clinic was engaged in the diversion of oxycodone pills, in that: (a) the Clinic prescribed an unusually large quantity of thirty-milligram oxycodone pills; (b) most of the Clinic's purported patients received the same quantity and type of medication; (c) many purported patients traveled long distances to visit the Clinic; (d) DANTE A. CUBANGBANG and JOHN F. GARGAN, the defendants, made no apparent attempts to wean purported patients off of oxycodone; (e) members of the same family received prescriptions for the same

quantity and type of medication; and (f) occupants of the same residence/building received prescriptions for the same quantity and type of medication.

18. DANTE A. CUBANGBANG and JOHN F. GARGAN, the defendants, routinely issued prescriptions for oxycodone without attempting to determine whether the pills were medically necessary. "Doctor visits" with CUBANGBANG and GARGAN generally lasted no more than a few minutes and involved little to no physical examination. CUBANGBANG and GARGAN each frequently saw as many as fifteen to twenty patients a day.

19. The Clinic's purported patients filled their prescriptions at area pharmacies, including at pharmacies located within the Southern District of New York. "Crew Chiefs" purchased the oxycodone pills obtained by these purported patients, and then sold the pills to other drug dealers or to drug-addicted individuals on the street. DANTE A. CUBANGBANG and MICHAEL KELLERMAN, the defendants, allowed several Crew Chiefs to use the Clinic in order to illegally purchase oxycodone pills from the Clinic's purported patients. LOREN PIQUANT, a/k/a "Loren Luna," was one such Crew Chief.

20. DANTE A. CUBANGBANG and MICHAEL KELLERMAN, the defendants, managed the Clinic and shared the cash generated from

the patient visit fees. JOHN F. GARGAN, the defendant, was paid approximately \$250 in cash each day to write fraudulent prescriptions. In or about August 2018, KELLERMAN told GARGAN that he was not scheduling enough patients, and that, therefore, he was not making enough money for the Clinic. In substance and in part, KELLERMAN told GARGAN he should work with LOREN PIQUANT a/k/a "Loren Luna," the defendant, to recruit additional patients off the street, including undocumented immigrants. KELLERMAN was recorded telling GARGAN: "There's no reason not to have patients. Ten million documented people living in New York City and another 2, 3 maybe 4 million undocumented. 15 million people living . . . Are you telling me you cannot . . . get the people to come over here?"

Statutory Allegations

21. From in or about January 2012 up to and including in or about September 2018, in the Southern District of New York and elsewhere, DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, 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.

22. It was a part and an object of the conspiracy that DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, 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).

23. The controlled substance that DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, 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 mixtures and substances containing a detectable amount of oxycodone, in violation of Title 21, United States Code, Section 841(b)(1)(C).

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

COUNT TWO
(Conspiracy to Commit Health Care Fraud)

The Grand Jury further charges:

24. The allegations contained in paragraphs 1 through 20 of this Indictment are repeated and realleged as though fully set forth herein.

Background on Medicare, Medicaid, and Insurance

25. The Medicare program is a federal health care program providing benefits to persons who are over the age of 65 or disabled. The New York State Medicaid program is a federal and state health care program providing benefits to the individuals and families who meet specified financial and other eligibility requirements, and certain other individuals who lack adequate resources to pay for medical care. The Patient Protection and Affordable Care Act of 2010, the provisions of which have been phased in over time, requires, subject to certain exceptions, insurance coverage for Americans not otherwise covered by Medicare or Medicaid. Medicare, Medicaid, and private insurers are each a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

26. Medicare, Medicaid, and private insurance cover costs related to medical treatment, such as the costs of physicians' services, prescription medications, and medical equipment. Generally, such costs are covered only if, among other requirements, such services and items are medically necessary and ordered by a physician or a nurse practitioner for a patient.

The Health Care Fraud Scheme

27. From at least in or about January 2012, up to and including in or about September 2018, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, conspired together to defraud Medicare and Medicaid by providing purported patients with prescriptions for medically unnecessary oxycodone pills, and by ordering medically unnecessary urinalysis tests, which they knew would be paid for by Medicare, Medicaid, or private insurance. The urinalysis tests were unnecessary because, among other reasons, CUBANGBANG and GARGAN did not in fact rely on them to determine whether their patients were taking the prescribed oxycodone, but rather, used them to make it appear as if they were operating a legitimate medical clinic.

28. From in or about 2012 to in or about 2015, the Clinic accepted Medicare and Medicaid for patient visits. During this period, DANTE A. CUBANGBANG, the defendant, routinely billed Medicare and Medicaid for patient visits that were not medically necessary. Specifically, CUBANGBANG and JOHN F. GARGAN, the defendant, provided oxycodone prescriptions to purported patients and ordered urinalysis tests without any legitimate medical need, knowing that Medicare and Medicaid would pay for some of these prescriptions and tests.

29. With the advent of New York's electronic prescription monitoring program, DANTE A. CUBANGBANG and MICHAEL KELLERMAN, the defendants, became increasingly concerned that electronic monitoring would reveal the huge number of oxycodone pills the Clinic was illegally prescribing. Accordingly, in or around 2015, CUBANGBANG and KELLERMAN switched to a cash-only policy for patient visits.

30. The Clinic nonetheless maintained many of the same purported patients who previously used Medicare or Medicaid to pay for their visits to the Clinic. Accordingly, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, knew that these purported patients continued to use Medicare and Medicaid. The defendants also knew that when these purported patients filled their prescriptions at a pharmacy, and when these purported patients received urinalysis tests, the pharmacies and diagnostic testing facilities would bill Medicare and Medicaid for medically unnecessary oxycodone pills and tests.

31. In or about August 2018, DANTE A. CUBANGBANG, the defendant, discussed with his purported patients which Medicare and Medicaid-connected insurance providers they should use to increase the number of oxycodone pills they were able to obtain. Among other things, CUBANGBANG discussed with these purported

patients the managed-care providers who were willing to authorize the highest number of oxycodone pills for each prescription.

Statutory Allegations

32. From in or about January 2012 up to and including in or about September 2018, in the Southern District of New York and elsewhere, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, willfully and knowingly, combined, conspired, confederated and agreed together and with each other to violate Title 18, United States Code, Section 1347.

33. It was a part and an object of the conspiracy that DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, and others known and unknown, knowingly and willfully, would and did execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347, to wit, CUBANGBANG, GARGAN, and KELLERMAN prescribed, and facilitated the prescribing of, medically unnecessary oxycodone

pills, and ordered, or facilitated the ordering of, medically unnecessary urinalysis tests.

(Title 18, United States Code, Sections 1349.)

COUNT THREE
(Conspiracy to Commit Money Laundering)

The Grand Jury further charges:

34. The allegations contained in paragraphs 1 through 20 of this Indictment are repeated and realleged as though fully set forth herein.

The Money Laundering Scheme

35. DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, deposited the proceeds from visits by their purported patients into at least five business bank accounts (the "Business Accounts"), which they then used to promote their illegal oxycodone distribution scheme.

36. From January 2015 through May 2018, the defendants deposited into the Business Accounts approximately \$1.2 million in cash. These funds were then used in part to pay business expenses. For instance, approximately \$136,000 was paid to JOHN F. GARGAN, the defendant, for his role in the conspiracy, approximately \$309,000 was paid in salaries for other employees, and approximately \$321,000 was paid in rent for the Clinic.

Statutory Allegations

37. From at least in or about January 2015 through May 2018, in the Southern District of New York and elsewhere, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, and others known and unknown, knowingly did combine, conspire, confederate, and agree together and with each other, to violate Title 18, United States Code, Section 1956(a)(1)(A)(i) and 2.

38. It was a part and object of the conspiracy that DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, and others known and unknown, in an offense involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions, to wit, the deposits of funds into bank accounts, represented the proceeds of some form of unlawful activity, willfully and knowingly would and did conduct and attempt to conduct such financial transactions which in fact involved the proceeds of specified unlawful activity, to wit, the proceeds from the narcotics trafficking offense described in Count One of the Indictment, with the intent to promote the carrying on of specified unlawful activity, to wit, CUBANGBANG, GARGAN, and KELLERMAN, used the proceeds of narcotics trafficking to operate and maintain the Clinic, including by paying rent and employee salaries, thereby allowing CUBANGBANG, GARGAN,

and KELLERMAN to continue to illegally distribute narcotics by prescribing, and facilitating the prescribing of, medically unnecessary oxycodone pills.

(Title 18, United States Code, Sections 1956(h).)

FORFEITURE ALLEGATIONS

39. As a result of committing the narcotics offense alleged in Count One of this Indictment, DANTE A. CUBANGBANG, JOHN F. GARGAN, MICHAEL KELLERMAN, and LOREN PIQUANT, a/k/a "Loren Luna," the defendants, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of said offense and any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses that the defendant personally obtained, and the following specific property:

a. Any and all United States currency, funds or other monetary instruments credited to the following accounts:

No.	Bank	Account No.
1.	TD Bank	4304931945

2.	Flushing Bank	18581666
3.	Flushing Bank	18581674
4.	Sterling Bank	8311187033
5.	JP Morgan Chase	4924127966
6.	Citibank Bank	63384611

40. As a result of committing the Federal health care offense charged in Count Two of this Indictment, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense and the following specific property:

a. Any and all United States currency, funds or other monetary instruments credited to the following accounts:

No.	Bank	Account No.
1.	TD Bank	4304931945
2.	Flushing Bank	18581666
3.	Flushing Bank	18581674
4.	Sterling Bank	8311187033
5.	JP Morgan Chase	4924127966
6.	Citibank Bank	63384611

41. As a result of committing the money laundering offense charged in Count Three of this Indictment, DANTE A. CUBANGBANG, JOHN F. GARGAN, and MICHAEL KELLERMAN, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 982(a)(1), any and all property, real and personal, involved in said offense, or any property traceable to such property, including but not limited to a sum of money in United States currency representing the amount of property involved in said offense, and the following specific property:

a. Any and all United States currency, funds or other monetary instruments credited to the following accounts:

No.	Bank	Account No.
1.	TD Bank	4304931945
2.	Flushing Bank	18581666
3.	Flushing Bank	18581674
4.	Sterling Bank	8311187033
5.	JP Morgan Chase	4924127966
6.	Citibank Bank	63384611

Substitute Assets Provision

42. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

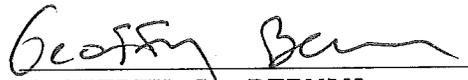
- (1) cannot be located upon the exercise of due diligence;

- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)




GEOFFREY S. BERMAN
United States Attorney

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Defendants.

SEALED INDICTMENT

18 Cr.

(21 U.S.C. § 846,
18 U.S.C. §§ 1349 and 1956)

Geoffrey S. Berman
United States Attorney.

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Foreperson.
