

IN THE MATTER
OF
ROBERT DELAGENTE, D.O.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: ROBERT DELAGENTE, D.O.


The undersigned, Howard Zucker, M.D., J.D., Commissioner of Health, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the criminal complaint in the United States of America v. Robert Delagente, has determined that ROBERT DELAGENTE, D.O. (henceforth: "Respondent"), New York license number 298346, has been charged with committing acts that constitute a felony under federal law, and in the Commissioner's opinion, the Respondent's alleged conduct constitutes an imminent danger to the health of the people. Attached hereto as Appendix A and made a part hereof is Mag. No. 19-8143 (SCM), the United States of America v. Robert Delagente.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12)(b), that effective immediately, Respondent shall discontinue or refrain from practicing medicine in the State of New York, or discontinue or refrain from practicing in any setting under the authority of Respondent's New York license.

Any practice of medicine in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law


§6530(29) and may constitute unauthorized medical practice, a

Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding to be provided to the Respondent at a later date and which will detail allegations of professional medical conduct in an attached Statement of Charges. If at any time the felony charges are dismissed, withdrawn, or reduced to non-felony charges, this Order shall terminate.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
May 21, 2019


Howard Zucker, M.D., J.D.
Commissioner of Health
New York State Health Department

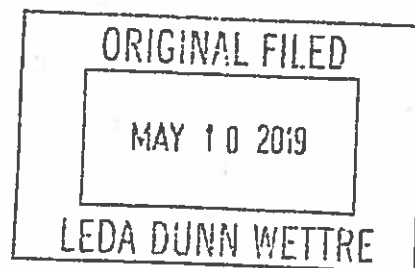
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Appendix A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY



UNITED STATES OF AMERICA : Hon. Leda Dunn Wettre
v. : Mag. No. 19-8143
ROBERT DELAGENTE : **CRIMINAL COMPLAINT**
:


I, Eric Eccleston, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Federal Bureau of Investigation and that this complaint is based on the following facts:

SEE ATTACHMENT B

Continued on the attached page and made a part hereof.


Eric Eccleston
Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,
May 10, 2019 at Essex County, New Jersey

THE HONORABLE LEDA DUNN WETTRE
UNITED STATES MAGISTRATE JUDGE


Signature of Judicial Officer

ATTACHMENT A

Count One
(Distribution of Controlled Substances)

From in or around May 2014 through in or around May 2019, in Bergen County, in the District of New Jersey, and elsewhere, the defendant,

ROBERT DELAGENTE

a licensed physician, did knowingly and intentionally distribute and dispense, outside the usual course of professional practice and not for a legitimate medical purpose, mixtures and substances containing detectable amounts of Schedule II through Schedule V controlled substances, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C).

Count Two
(Obstruction of Justice)

From on or about April 26, 2019 through on or about May 9, 2019,
in Bergen County, in the District of New Jersey, and elsewhere, the defendant,

ROBERT DELAGENTE

did knowingly alter, destroy, conceal, cover up, falsify, and make a false entry in any record, document, or tangible object, namely, various medical records from North Jersey Family Medicine, LLC, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter, which the defendant knew was within the jurisdiction of a department or agency of the United States, specifically, the Department of Justice and the Federal Bureau of Investigation.

In violation of Title 18, United States Code, Sections 1519 and 2.

ATTACHMENT B

I, Eric Eccleston, have been a Special Agent with the Federal Bureau of Investigation ("FBI") for the past one year. I have been personally involved with the investigation of this matter. The information contained in this Criminal Complaint is based on my personal knowledge, my conversations with other law enforcement officers, and on information obtained from other sources, including: (a) statements made or reported by various witnesses with knowledge of the relevant facts; (b) my review of publicly available information relating to the defendant; and (c) my review of documents and evidence obtained by court orders, subpoenas, and other sources. Because this Criminal Complaint is being submitted for the limited purpose of establishing probable cause, it does not include every fact that I have learned during the course of the investigation. Where the content of documents and the actions, statements, and conversations of individuals are recounted here, they are recounted in substance and in part. Explanations of conversations in parentheses are based upon my knowledge and experience, the knowledge, training, and experience of law enforcement agents and officers with whom I have spoken, and the results of the investigation to date. All dates and times are approximate.

1. At all times relevant to this Complaint:

The Controlled Substances Act

- a. The Controlled Substances Act ("CSA"), codified in Title 21 of the United States Code, and its promulgating regulations, classified drugs into five schedules depending on a drug's acceptable medical use and its abuse and dependency potential.

- b. Schedule I controlled substances, such as heroin, did not have an acceptable medical use in the United States. Schedule II through Schedule V controlled substances had acceptable medical uses.

- c. The medical use of Schedule II controlled substances such as oxycodone, Percocet,¹ and Adderall, was severely restricted because such drugs had a high potential for abuse. Oxycodone was an opioid pain medication and had among the highest potential for abuse and associated risk of fatal overdose.

- d. Schedule III controlled substances, such as Tylenol with codeine, had a lower abuse potential than those in Schedule II, but a higher abuse potential than those in Schedule IV. Schedule IV substances

¹ Percocet is the brand name drug that contains a combination of oxycodone and acetaminophen, a/k/a "Tylenol."

include Alprazolam, a/k/a "Xanax"; diazepam, a/k/a "Valium"; and clonazepam, which were classified as benzodiazepines, a class of psychoactive drugs used to treat a range of conditions, including anxiety and insomnia.

e. Schedule V controlled substances, such as temazepam, a/k/a "Restoril," represented the group with the least potential for abuse and consisted of preparations containing limited quantities of certain narcotics. Temazepam, a benzodiazepine, was used to treat insomnia.

f. 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."

g. 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." Title 21, United States Code, Section 802(21), provided that "'practitioner' means a physician"

h. The CSA authorized Schedule II through Schedule V controlled substances to be dispensed to individuals by a valid prescription. 21 U.S.C. § 829.

i. For a prescription for a controlled substance to be valid it must be issued for a legitimate medical purpose by a registered practitioner acting in the usual course of his or her professional practice. 21 C.F.R. § 1306.04 ("An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. § 829]"). In addition to requirements imposed by the State of New Jersey, physicians or practitioners must obtain and maintain a registration with the United States Drug Enforcement Administration ("DEA") authorizing them to prescribe controlled substances in the Schedules in which they are registered ("registered practitioner"). 21 C.F.R. § 1306.03.

j. Consequently, a registered practitioner issuing prescriptions for controlled substances not in the usual course of professional treatment and not for a legitimate medical purpose violates the provisions of the CSA and is subject to its penalties. 21 C.F.R. § 1306.04.

Defendant Robert Delagente

k. Defendant ROBERT DELAGENTE was a resident of Oakland, New Jersey and was a licensed physician in the State of New Jersey. DELEGANTE was also a registered practitioner with the DEA, which allowed him to dispense and issue prescriptions for Schedule II through Schedule V controlled substances so long as it was in the usual course of professional practice and for a legitimate medical purpose.

1. DELAGENTE was part of a medical practice called North Jersey Family Medicine ("NJFM"), located in Oakland, New Jersey, and often referred to himself in conversations about his propensity for prescribing painkillers as the "Candy Man" or the "El Chapo of Opioids."

DELAGENTE's Criminal Conduct

2. DELAGENTE knowingly prescribed controlled substances, such as oxycodone, Percocet, Tylenol with codeine, and various benzodiazepines (e.g., alprazolam, diazepam, clonazepam, and temazepam), outside the ordinary course of professional practice and without a legitimate medical purpose.

3. DELAGENTE knowingly ignored the inherent danger and medical risk of overdose, drug abuse, and death that can accompany prescriptions of highly addictive opioids, benzodiazepines, and muscle relaxers, both on their own and in combination with one another.

4. DELAGENTE prescribed controlled substances, both individually and in combination with one another, often without ever seeing the purported patient for a medical visit or even discussing with the patient the medical need for the prescription.

5. DELAGENTE often prescribed the dangerous drug combination known as the "Holy Trinity," comprised of opioids (usually oxycodone), benzodiazepines (usually alprazolam) and muscle relaxers (usually carisoprodol).

6. DELAGENTE also failed to monitor patients for addiction, and he in certain instances ignored drug screening tests to determine whether certain patients were taking illicit drugs. In fact, DELAGENTE knowingly prescribed controlled substances outside the usual course of professional practice and without a legitimate medical purpose to patients he knew or had reason to know were addicted to opioids or other controlled substances.

7. On or about May 11, 2016, DELAGENTE received a text message from an employee at NJFM ("Employee-1") informing DELAGENTE that two patients were upset that they had waited at NJFM but were not able to see a physician at NFJM to obtain prescriptions for controlled substances. Employee-1 texted DELAGENTE, "They both want their scripts tomorrow. I'll

talk to u in the morning. Night.” Employee-1 then informed DELAGENTE that one of the patients had driven a long distance and obtained a babysitter. DELAGENTE responded, “Oh well...C’est la vie! Lol . . . He can wait for his oral heroin another day. Lol.”

Specific Instances of DELAGENTE’s Criminal Conduct

A. DELAGENTE’s Distribution of Controlled Substances to Patient-1

8. On or about January 27, 2017, Patient-1 texted DELAGENTE, “Hi Dr Dela Gente just wondering if u were able to send prescriptions to [Pharmacy-1] for Mom and I for Tylenol #3”? DELAGENTE texted back, “Hi [Patient-1]! Yes, I sent mom few days ago and your [sic] now. I didn’t want raise a flag with [Pharmacy-1] because it’s a pain killer [sic]. Check pharm first if ready before you go. If you can pick up mom and yours on different days to not raise suspicion. Patient-1 replied, “Nice thank you very much!!!!” Later, on or about January 28, 2017, Patient-1 texted DELAGENTE, “I picked it up last night. It’s such a HUGE HELP that I don’t have to drag mom out. Thank you have a great weekend.”

9. On or about April 24, 2017, Patient-1 texted DELAGENTE, “Good morning Dr Dela Gente Mom accidentally had lost her entire bottle of sleeping pills. It must have fallen in the garbage next to her bed table and cleaning lady must have thrown it out very upsetting! I know we can’t refill yet but just wondering if you could send a prescription under my name for the 30 mg TEMAZEPAN [sic] . . .So sorry ..” DELAGENTE replied, “Hi [Patient-1]. No problem. Will take care of.”

10. Prescription records obtained by law enforcement indicated that, on or about April 25, 2017, DELAGENTE prescribed Patient-1 90 tablets of temazepam 30mg to be taken once daily for ninety days.

11. On or about July 22, 2017, Patient-1 texted DELAGENTE, “Hi Dr Dela Gente . . . Sorry for contacting you on a Saturday... but if you get a chance... Mom needs a refill on her ACETAMINOPHEN/COD #3 (300/30mg) . . . Can you refill mine as well? To cover her in between . . . Thank you so so much.” (Patient-1 was asking DELAGENTE to prescribe Patient-1 Tylenol #3,² a/k/a “Tylenol with codeine,” to supposedly help Patient-1’s mother when Patient-1’s mother ran out of the medication early.) DELAGENTE texted back, “Hi [Patient 1]! Yes, no problem. Will send over shortly. I will send yours on a different day to not draw any suspicion. Take Care!”

²Tylenol #3 is the brand name of a combination drug containing 30mg of codeine and 300mg of acetaminophen, a/k/a “Tylenol.” Tylenol #3 is a Schedule III controlled substance and is commonly referred to as Tylenol with codeine.

12. According to prescription records obtained by law enforcement, on or about July 22, 2017, DELAGENTE prescribed Patient-1's mother 120 tablets of Tylenol #3 to be taken four times a day for thirty days. On or about August 8, 2017, DELAGENTE prescribed Patient-1, outside the ordinary course of professional practice and not for legitimate medical purpose, 100 tablets of Tylenol #3 with directions to take up to six tablets per day for sixteen days.

13. On or about October 28, 2017, Patient-1, via text message, again asked DELAGENTE to refill Patient-1's mother's temazepam and Tylenol #3 prescriptions and then asked, "If you can send on a different day, under my name 1) Tamazepan [sic] 30 mg 2) Tylenol #3." According to prescription records obtained by law enforcement, it appears that on or about November 1, 2017, DELAGENTE prescribed Patient-1's mother 90 tablets of temazepam 30mg and 120 tablets of Tylenol #3. Then, approximately nine days later, on or about November 10, 2017, DELAGENTE prescribed Patient-1 100 tablets of Tylenol #3 outside the usual course of professional practice and without a medical need.³

B. DELAGENTE's Distribution of Controlled Substances to Patient-2

14. On or about January 9, 2018, an employee of NJFM ("Employee-2") texted DELAGENTE: "Hey Dr D sorry for bothering you but [Patient-2] called speech is very slurred. [Patient-2] called wanting to increase all [Patient-2's] meds to be taken 4 times a day. Did and [sic] nj rx report⁴ and [Patient-2] is getting . . . Xanax 0.5 mg from [Practitioner-1] last filled 12/11/17 and [Patient-1] got a Xanax 1 mg from you on 12/20/17. Same thing with her vyvanse 70 mg for [Practitioner-1] on 12/3/17 and [Patient-2] got a rx⁵ from you and filled on 12/20/17 vyvanase 70 mg. Just giving you a heads up." (Employee-2 was warning DELAGENTE that Patient-2 may be abusing controlled substances and was requesting that DELAGENTE increase Patient-2's dosage of alprazolam and Vyvanse, a Schedule II controlled substance. Employee-2 was also warning DELAGENTE that Employee-2 reviewed records

³ Prescription records obtained by law enforcement do not show DELEGANTE prescribing temazepam to Patient-1 on or about November 10, 2017.

⁴ The New Jersey Prescription Monitoring program ("NJMPMP") is a statewide database that collects prescription data on controlled substances and human growth hormone dispensed in outpatient settings in New Jersey and by out-of-state pharmacies dispensing into New Jersey. Pharmacies are required to electronically report information to the NJMPMP on a daily basis. Prescriptions must be reported to the NJMPMP database no more than one business day after the date the prescription was dispensed.

⁵ "Rx" is a medical abbreviation for "prescription."

from the New Jersey Prescription Monitoring Program ("nj rx report"), which revealed that Patient-2 was "doctor shopping" and receiving the identical controlled substances at the same time from another practitioner.)

15. DELAGENTE responded, "Ok. Increase which meds 4x a day? Xanax?" Employee-2 texted back, "[Patient-2] wants to increase all [Patient-2's] meds to 4 times a day and vyvanase 70 mg to [twice a day]." DELAGENTE replied, "Let me sleep on it...wackos NJ!!" Later, Employee-2 texted DELAGENTE, "I think [Patient-2] called back . . . I'm not quite sure but I wasn't going to tell you I already messaged you. Do you even want to see the patient? I can call and cancel it . . ." DELAGENTE responded, "No...go ahead and approve the meds. [Patient-2] will keep me the [sic] room...don't have time for that right now. But if [Patient-2] still wants to see me, nothing I can do." Employee-2 then responded, "Ok so fill alprazolam 1 mg [four times a day] . . . Vyvanase 70 mg [twice a day]? Print out scripts and [Patient-2] has to pick them up correct?" Employee-2 then texted, "No no no I will take care of this for you. I got you." DELAGENTE replied, "Ok. But if [Patient-2] still wants to come in then don't do it...I will just discuss it with her she [sic] print it [sic] myself." (DELAGENTE was telling Employee-2 that if Patient-2 really wanted to see DELAGENTE for a medical appointment, he would see her. DELAGENTE was also telling Employee-2 not to give Patient-2 the new prescriptions that Patient-2 had requested.) Later, after Employee-2 contacted Patient-2, Employee-2 sent the following text message to DELAGENTE: "Spoke with patient [Patient-2] wants to still come in. I tried dr d I am sorry." To which DELAGENTE wrote back, "It's ok."

16. According to prescription records obtained by law enforcement, on or about January 10, 2018, DELAGENTE prescribed Patient-2, outside the usual course of professional practice and without a legitimate medical purpose, 120 tablets of Xanax 1mg to be taken four times a day and 60 tablets of Vyvanse 70mg to be taken twice a day for a total daily dose of 140mg.⁶ Vyvanse is a stimulant and Schedule II controlled substance used to treat attention deficient disorder. The recommended dosing of Vyvanse is once daily with a maximum daily dose of 70mg.⁷

C. DELAGENTE's Distribution of Controlled Substances to Patient-3

17. According to Patient-3, Patient-3 became a patient of DELAGENTE's in or around 2015. On or about March 23, 2016, Patient-3 sent

⁶ Prior to January 10, 2018, DELAGENTE prescribed Patient-2 90 tablets of Xanax 1mg to be taken three times a day and 30 tablets of Vyvanase 70mg to be taken once a day.

⁷ See <https://vyvanse.com/doses>, last visited May 10, 2019.

a text message to DELAGENTE and asked if Patient-3 could obtain a prescription for pain medication without a medical visit to see DELAGENTE. Patient-3 wrote, "If you just wanna give me the script I'll gladly take it and go and leave lol." DELAGENTE responded, "Let me print one and my nurse will give it to you."

18. On or about March 23, 2016, prescription records obtained by law enforcement indicated that DELAGENTE wrote a prescription to Patient-3 for 60 tablets of Percocet 10mg for a ten-day supply. The text message conversation between Patient-3 and DELAGENTE indicated that DELAGENTE did not examine Patient-3 before agreeing to dispense a Schedule II controlled substance to Patient-3.

19. Approximately two weeks later, on or about April 7, 2016, Patient-3 sent a text message to DELAGENTE requesting a "refill" of Patient-3's pain prescription "without an appointment just this one time?" DELAGENTE replied, "No problem. Will leave at the front," referring to the front desk of his medical practice. Prescription records obtained by law enforcement indicate that, on or about April 8, 2016, Patient-3 filled two prescriptions written by DELAGENTE on or about April 7, 2016: one prescription for 60 tablets of Percocet 10mg for a ten-day supply and a second prescription for 90 tablets of clonazepam 1mg for a thirty-day supply (collectively, the "April 7 Prescriptions").

20. Medical records obtained by law enforcement from NJFM pertaining to Patient-3 show that Patient-3 did not have an office visit with DELAGENTE before receiving the April 7 Prescriptions. Nor did DELAGENTE record any medical notes before writing the April 7 Prescriptions. The only item noted in Patient-3's medical records on or around that date is an addendum added by a NJFM employee that read, "Pt's boyfriend picked up Rx" (meaning that Patient-3's boyfriend picked up the April 7 Prescriptions).

21. Approximately one week later, on or about April 15, 2016, Patient-3 again sent a text message to DELAGENTE requesting pain medication, claiming that the pain medication DELAGENTE had prescribed the week before was "not working like it used to." DELAGENTE responded that he was "working this weekend so if you want to come in the office tomorrow I will see you and give you more pain meds." Subsequent records obtained by law enforcement show that, on or about April 16, 2016, Patient-3 filled two prescriptions containing oxycodone written by DELAGENTE: (1) a prescription for 60 tablets of Oxycontin 10mg (containing 10mg of oxycodone per tablet), for a thirty-day supply; and (2) 100 tablets of Percocet 10mg (containing 10mg of oxycodone of oxycodone per tablet) for a twenty-five-day supply.

22. The following month, on or about May 11, 2016, Patient-3 sent another text message to DELAGENTE asking for pain medication.

DELAGENTE responded that “laws were getting so strict on primary care docs writing chronic narcotics” that Patient-3 should see a pain management doctor that worked at DELAGENTE’s practice. Patient-3 responded, “My whole family is here for graduation can I see him next week? 1 exception?” DELAGENTE replied, “Ok. I can leave you a script for 2 weeks of Percocet.” Prescription records obtained by law enforcement indicate that, on or about May 11, 2016, DELAGENTE wrote the following three prescriptions for Patient-3: (1) 60 tablets of Percocet 10mg for a fifteen-day supply; (2) 30 tablets of Oxycontin 10mg for a fifteen-day supply; and (3) 30 capsules of Vyvanse 60mg for a thirty-day supply.

23. In a subsequent interview with law enforcement, Patient-3 stated that Patient-3 became addicted to pain medication before Patient-3 started seeing DELAGENTE in or around 2015. Patient-3 stated that Patient-3’s previous pain doctor had ceased writing Patient-3 prescriptions for painkillers because it was clear that Patient-3 had become addicted to them. Patient-3 explained that DELAGENTE provided his personal cell phone number, and Patient-3 confirmed that Patient-3 would often contact DELAGENTE for prescriptions by text message and would pick them up at the office without ever seeing DELAGENTE. Patient-3 entered a rehabilitation facility in or around November 2017 in Florida.

D. DELAGENTE’s Obstruction Pertaining to Patient-3

24. Medical records obtained by law enforcement from NJFM pursuant to a court-authorized search warrant executed at NJFM’s offices on or about June 21, 2018 indicated that Patient-3 came to NJFM for an office visit with DELAGENTE on or about September 27, 2017, even though a text message exchange between DELAGENTE and Patient-3 indicated that DELAGENTE provided a prescription to Patient-3 without an office visit. The medical record from NJFM obtained by law enforcement on or about June 21, 2018 was also marked as unsigned.

25. On or about April 26, 2019, law enforcement served a subpoena on NJFM requesting medical records pertaining to Patient-3 and other patients of DELAGENTE and NJFM. On or about May 6, 2019, NJFM⁸ provided information responsive to the subpoena but had altered the medical record dated September 27, 2017 pertaining to Patient-3. Specifically, DELAGENTE added several sections, including an entire section under the heading “HPI” (which stands for History of Present Illness) to Patient-3’s medical record from September 27, 2018 indicating several different conditions that Patient-3 was supposedly suffering from. DELAGENTE also added a section entitled “PLAN,” which purported to set forth warnings that DELAGENTE had related to Patient-3 concerning the dangers of the pain medication he was prescribing. The

⁸ DELAGENTE is currently the only medical doctor working at NJFM.

medical record indicated that DELAGENTE “[e]lectronically signed” it on May 4, 2019.

E. DELAGENTE’s Distribution of Controlled Substances to Patient-4

26. On or about February 1, 2016, Patient-4 wrote a text message to DELAGENTE, stating, “As we discussed... I’d text you when i need a Refill of the 30mg oxycodone (120 quantity) for my back. You said you’d leave it in an envelope at front desk for me. You can put in that i was in the office of course.” DELAGENTE replied, “Ok, no problem but I’m not in the office tomorrow so I will have to make it for Wednesday to document due to nature of the drug. Remember they are monitoring this particular drug very closely due to heavy abuse in the streets.” When DELAGENTE asked Patient-4 if Patient-4’s spouse knew that Patient-4 was taking oxycodone, Patient-4 responded, “Yes. I take 1 to 2 per day. It’s under control. It takes away the nervousness. I am fine. I won’t abuse it...never. yes..I just use it to cut the edge not to get ‘up’.” DELAGENTE replied, “Ok. No problem. Will have the script ready for you Wednesday morning. FYI I have to put you in the schedule, ok?” (DELAGENTE was telling Patient-4 that DELAGENTE must put Patient-4 into “the schedule” even though Patient-4 did not have an in-person visit or physical examination with DELAGENTE.)

27. A couple of days later, on or about February 3, 2016, Patient-4 went to DELAGENTE’s medical practice to pick up the prescription. When Patient-4 told DELAGENTE that Patient-4 was asked by a front-desk worker whether Patient-4 had been seen for an examination by DELAGENTE and that Patient-4 had responded no, DELAGENTE responded, “That’s ok. But the future [sic], you need to come in especially for this medication because it’s highly monitored. So, I have to document that I saw you. If it was any other medication, no problem just picking it up. But with your medication, I have to physically see you, ok?” Patient-4 responded that it was difficult to travel to see DELAGENTE each time Patient-4 needed a prescription for pain medication. DELAGENTE replied, “Unfortunately reality especially with this medication. I’m literally sticking my neck out and can lose my medical license or arrested for what I just did.”

28. Prescription records obtained by law enforcement indicate that, on or about February 4, 2016, Patient-4 filled a prescription written by DELAGENTE for 120 tablets of oxycodone 30mg for a thirty-day supply. Medical records from NJFM obtained by law enforcement pertaining to Patient-4 reflect no medical notes whatsoever from DELAGENTE indicating the medical necessity for prescribing Patient-4 opioids in this quantity.

29. On or about May 27, 2016, Patient-4 sent a text message to DELAGENTE stating, “Hey...at this point...I probably can’t stop the pk’s...as in

just stop.” (Patient-4 was telling DELAGENTE that he was addicted to painkillers (“pk’s”) and that Patient-4 did not believe that Patient-4 could simply stop taking them.) Patient-4 continued, “U know why. And they do help me for my personal pain more than hurt...but they have negatives. I am interested in another method but what is it? And I would need a plan to stop...not cold turkey.” (Patient-4 was asking DELAGENTE to help with Patient-4-2’s addiction to pain medication but was seeking a plan that did not involve stopping immediately (“not cold turkey”).)

30. On or about May 31, 2016, DELAGENTE told Patient-4 that Patient-4 would have to begin to see a new pain doctor at NJFM in order to obtain prescriptions for pain medication. In a text message sent to Patient-4 the same day, DELAGENTE wrote, “This new pain doctor will likely continue your pain meds as he has been doing for our other patients so far. Mention its [sic] for your chronic back pain and nothing else.”

31. A few days later, on or about June 3, 2016, Patient-4 sent a text message to DELAGENTE stating, “Ur pain doc just rescheduled on me until wed...that’s no good. I run out on Saturday. I want to change to a different plan like we discussed but can’t do it without our plan. So what do I do? If I go 4 days without I am in huge trouble.” DELAGENTE responded, “I know...I just heard. I will leave you a short supply RX at the front to pick up until Wednesday.”

32. According to prescription records obtained by law enforcement, on or about June 3, 2016, DELAGENTE wrote a prescription for Patient-4 for 120 tablets of oxycodone 30mg for a thirty-day supply, which Patient-4 filled the next day.

F. DELAGENTE’s Distribution of Controlled Substances to Patient-5

33. On or about May 1, 2016, Patient-5 wrote a text message to DELAGENTE, stating “Hey Dr D. Sorry to bother you, it's [Patient-5]. I'm due to see you this week, I just got some bad news about my Fathers health. I could not forgive myself If i lost him and I didn't get down to him. I thought I would ask if there was any way you could leave my script's for me in an envelope with my name on it- I don't have a present appointment but I would pay for a visit and pick them up early tomorrow that would be great? I'm sure your booked up and I know your not in on Tuesday- I hate to even put you in these positions, I just would not forgive myself if I didn't get down to him as soon as possible and I just thought I would ask?!” DELAGENTE replied, “Hi [Patient-5]. I'm sorry to hear about your dad. Ok, I will leave the rx at the front to pick up. Take care!”

34. Prescription records obtained by law enforcement indicate that, on or about May 2, 2016, Patient-5 filled two prescriptions written by DELAGENTE for: (1) 120 tablets of oxycodone 30mg for a thirty-day supply; and (2) 90 tables of diazepam 10mg for a thirty-day supply.

35. On or about May 27, 2016, Patient-5 sent a text message to DELAGENTE stating "Hey Dr. D, my meds are due to be filled Monday - I got back from being with my father and it's been a very hard month - are you still able to write my scripts? . . . - is there anyway to see you or pick up my refills at the desk - are you even there Monday ? Is there anyway you can help me one last time?" DELAGENTE replied, "No problem I can leave you an RX this weekend but yes you need to establish with the new pain doc in the office sooner than later. With the opioid [sic] epidemic fed govt making stricter rules so NJFM found pain doc who is willing to write pain meds and help manage our pain patients in case primary care no longer allowed to write the pain meds. I will leave you an RX for 2 weeks worth"

36. Prescription records obtained by law enforcement indicate that, on or about May 29, 2016, Patient-5 obtained a prescription written by DELAGENTE for 60 tablets of oxycodone 30 mg for a fifteen day supply and a prescription for 90 tablets of Valium 10 mg for a 30 day supply. Medical records for NJFM obtained by law enforcement pertaining to Patient-5 do not indicate any legitimate medical purpose for this prescription written by DELAGENTE for Patient-5 on or around May 29, 2016.

G. DELAGENTE's Obstruction Pertaining to Patient-5

37. Medical records obtained by law enforcement from NJFM pursuant to a court-authorized search warrant executed at NJFM's offices on or about June 21, 2018 indicated that Patient-5 came to NJFM for an office visit with DELAGENTE on or about May 2, 2016, even though a text message exchange between DELAGENTE and Patient-5 described above indicated that DELAGENTE provided a prescription to Patient-5 without an office visit. The medical record from NJFM obtained by law enforcement on or about June 21, 2018 was also marked as unsigned.

38. On or about April 26, 2019, law enforcement served a subpoena on NJFM requesting medical records pertaining to Patient-5 and other patients of DELAGENTE and NJFM. On or about May 6, 2019, NJFM provided information responsive to the subpoena but had altered the medical record dated May 2, 2016 pertaining to Patient-5. Specifically, DELAGENTE added several sections, including an entire section under the heading "HPI" (which stands for History of Present Illness) to Patient-5's medical record from May 2, 2016 indicating several different conditions that Patient-5 was supposedly suffering from. DELAGENTE also added a section entitled "PLAN," which purported to set forth warnings that DELAGENTE had related to Patient-5

concerning the dangers of the pain medication he was prescribing. The medical record indicated that DELAGENTE “[e]lectronically signed” it on May 5, 2019.

H. DELAGENTE’s Distribution of Controlled Substances to Patient-6

39. Patient-6 was a patient of DELAGENTE’s, and DELAGENTE wrote “Holy Trinity” prescriptions for Patient-6 on approximately seven occasions beginning in or around April 2014.

40. For example, DELAGENTE prescribed I Patient-6 a combination of the following: (1) 60 tablets of 30 mg oxycodone; (2) 100 tablets of 2 mg alprazolam; and (3) 100 tablets of 250 mg or 350 mg carisoprodol. According to prescription records obtained by law enforcement, DELAGENTE prescribed this “Holy Trinity” of medications to Patient-6 on or about the following dates: April 11, 2014; August 11, 2014; December 18, 2014; April 17, 2015; August 17, 2015; October 30, 2015; and July 27, 2017.

41. On or about January 31, 2018, Patient-6 sent a text message to DELAGENTE asking him for refills of several prescriptions including one for oxycodone. DELAGENTE responded by stating, “Yes, no problem. Will print scripts for you and have ready at front.” Patient-6 responded, “Ok i’ll be there in about 30 minutes.”

42. According to prescription records obtained by law enforcement, Patient-6 filled the following prescriptions on or about January 31, 2018 written by DELAGENTE: (1) 60 tablets of oxycodone 30mg in a fifteen-day supply; (2) 60 tablets of extended-release Xanax 2mg in a sixty-day supply; (3) 100 tablets of Xanax 2mg for a thirty-three-day supply; and (4) 90 tablets of dextroamphetamine 30mg for a thirty-day supply.

I. DELAGENTE’s Obstruction Pertaining to Patient-6

43. Medical records obtained by law enforcement from NJFM pursuant to a court-authorized search warrant executed at NJFM’s offices on or about June 21, 2018 indicated that Patient-6 came to NJFM for an office visit on or about January 31, 2018, even though the text messages between DELAGENTE and Patient-6 indicate that DELAGENTE was going to provide the prescriptions for Patient-6 to pick up without an office visit. The medical record from NJFM obtained by law enforcement on or about June 21, 2018 was also marked as unsigned.

44. On or about April 26, 2019, law enforcement served a subpoena on NJFM requesting medical records pertaining to Patient-6 and other patients of DELAGENTE and NJFM. On or about May 6, 2019, NJFM provided

information responsive to the subpoena but had altered the medical record dated January 31, 2018 pertaining to Patient-6. Specifically, DELAGENTE added an entire section under the heading "HPI" (which stands for History of Present Illness) to Patient-6's medical record from January 31, 2018 indicating several different conditions that Patient-6 was supposedly suffering from. DELAGENTE also added a section entitled "PLAN," which purported to set forth warnings that DELAGENTE had related to Patient-6 concerning the dangers of the pain medication he was prescribing. The medical record indicated that DELAGENTE "[e]lectronically signed" it on May 6, 2019 at 10:28 a.m.

45. Likewise, a medical record produced by DELAGENTE to law enforcement pursuant to the April 26, 2019 subpoena for Patient-6 for a purported office visit on May 2, 2018 contained significant information that it had not contained when law enforcement collected the information when it executed a court-authorized search warrant on or about June 2018. The May 2, 2018 medical record indicated that DELAGENTE "[e]lectronically signed" it on May 6, 2019 at 10:21 a.m. (approximately seven minutes before he had signed Patient-6's January 31, 2018 medical record).