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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2019 APR -9 PM 12: 58

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	Case No. <u>3:19-cr-68</u>
vs.)	Judge Walter H. Rice
)	INDICTMENT
)	
MORRIS L. BROWN)	21 U.S.C. § 841
ISMAIL ABUHANIEH)	21 U.S.C. § 843(a)(3)
MAHMOUD RIFAI)	21 U.S.C. § 846
MAHMOUD ELMARI)	21 U.S.C. § 856
YOHANNES TINSAE)	
)	FORFEITURE

The GRAND JURY charges:

At times material to this Indictment:

DEFENDANTS

1. Defendant MORRIS BROWN was a resident of Montgomery County, Ohio.
2. Defendant ISMAIL ABUHANIEH was a resident of Maricopa County, Arizona. ABUHANIEH was a licensed pharmacist.
3. Defendant MAHMOUD RIFAI was a resident of Wayne County, Michigan. RIFAI was a licensed pharmacist.
4. Defendant YOHANNES TINSAE was a resident of Greene County, Ohio. Beginning on or around July 2010, TINSAE was a licensed pharmacist.
5. Defendant MAHMOUD ELMARI was a resident of Greene County, Ohio.

GENERAL ALLEGATIONS AND TERMINOLOGY

6. The Controlled Substances Act (“CSA”) governs the manufacture, distribution, and dispensation of controlled substances in the United States. The CSA and the Code of Federal Regulations (“CFR”) contain definitions relevant to this Indictment, some of which are set forth below.

7. The term “controlled substance” means a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV and V, as designated by Title 21, United States Code, Section 802(c)(6), and the CFR.

8. The term “Schedule II” means the drug or other substance has a high potential for abuse; the drug has a currently accepted medical use with severe restrictions; and abuse of the drug or other substance may lead to severe psychological or physical dependence.

9. The term “dispense” means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance.

10. The term “distribute” means to deliver (other than by administering or dispensing) a controlled substance.

11. The term “practitioner” means a medical doctor, physician, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which she or he practices, to dispense a controlled substance in the course of profit.

12. The term “pharmacist” means any pharmacist licensed by a State to dispense controlled substances, and shall include any person authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such state.

13. The Drug Enforcement Administration (“DEA”) issues registration numbers to qualifying doctors and pharmacies, who become authorized to dispense Schedule II, II, IV, and V controlled substances. To issue a prescription for a controlled substance, a doctor or pharmacy must have a DEA registration number for each location in which they are dispensing medicine per state where dispensing controlled substances.

14. A prescription for a controlled substance violates the CSA and CFR if it is issued beyond the bounds of medical practice or is not for a legitimate medical purpose in the usual course of a professional practice.

15. The term “dosage” is the amount, frequency, and number of doses of medication authorized by a practitioner, who has been issued a DEA registration number.

16. The term “prescription” means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user.

17. The purpose of a urine test is to determine if the prescribed medications and/or illicit drugs (e.g., cocaine) is in the patient’s urine.

CONTROLLED SUBSTANCES RELEVANT TO THE INDICTMENT

18. Endocet is a brand name pill that contains oxycodone, a Schedule II controlled substance.
19. Oxycodone is a Schedule II controlled substance.
20. Methadone is a Schedule II controlled substance.
21. Hydrocodone is a Schedule II controlled substance.
22. Morphine is a Schedule II controlled substance.
23. Fentanyl is a Schedule II controlled substance.
24. Xanax is a brand name pill that contains alprazolam, a Schedule IV controlled substance.
25. Soma is a brand name pill that contains carisoprodol. As of January 11, 2012, Carisoprodol is a Schedule IV controlled substance.

MORRIS BROWN'S ILLEGAL DISTRIBUTION OF CONTROLLED SUBSTANCES

26. Defendant MORRIS BROWN obtained his medical license in the State of Ohio on or around 1975, specializing in family medicine.
27. Beginning on or around 1986 and continuing up to on or around November 2017, defendant MORRIS BROWN, owned, operated, and provided medical services through his company DAYTON PRIMARY & URGENT CARE CENTER, INC. ("DAYTON PRIMARY"), located at 301 West First Street, Suite 100, in Dayton Ohio, in the Southern District of Ohio.
28. On or about 2006, DAYTON PRIMARY became a Domestic Limited Liability Company in the State of Ohio.

29. MORRIS BROWN was registered with federal and state authorities to prescribe schedule II-V controlled substances.

30. During patient visits, MORRIS BROWN often provided only a cursory medical examination of patients before agreeing to provide them Schedule II controlled substance prescriptions.

31. In many instances, MORRIS BROWN provided large amounts of controlled substance prescription medications to patients that BROWN knew or had a reasonable cause to believe were drug addicts or diverting/selling the medication.

32. MORRIS BROWN rarely, if ever, counseled patients regarding alternative treatments for pain, such as physical therapy, psychological or addiction counseling, or surgery.

33. As part of the patient "visit," MORRIS BROWN, or others in his office, administered urine tests for the purpose of disguising the lack of any legitimate medical purpose for the prescription, dispensing, or distribution of controlled substances. MORRIS BROWN ignored the results of the urine tests and continued to provide controlled substances to patients.

34. MORRIS BROWN also ignored information provided to him by other medical professionals about other patients exhibiting drug-seeking behavior, and continued to provide controlled substances to patients.

35. MORRIS BROWN distributed and dispensed, and caused to be distributed and dispensed, controlled substances to many of his patients not for a

legitimate medical purpose and outside the scope of professional practice. Despite some aspects of legitimate medical practice, MORRIS BROWN ran what was, in essence, a “pill mill”—MORRIS BROWN’s primary method of treating nearly all of his patients was to prescribe highly addictive opioid controlled substances, including, but not limited to, endocet, oxycodone, methadone, hydrocodone, morphine, fentanyl, carisoprodol, and alprazolam.

36. MORRIS BROWN continued these prescriptions even after learning that some of his patients had experienced overdoses, and in some cases, deaths.

37. On or about October 1, 1986, defendant MORRIS BROWN incorporated MORRIS L. BROWN, M.D. & ASSOCIATES, INC. as a professional corporation (“BROWN & ASSOCIATES”) in the State of Ohio.

38. On or about August 2005, BROWN & ASSOCIATES purchased property located at 301 West First Street, Suite 100, Dayton, Ohio.

39. Between on or about 2008 and on or about 2017, DAYTON PRIMARY operated at the 301 West First Street, Suite 100, Dayton, Ohio location, owned by MORRIS BROWN.

40. Between on or about 2008 and on or about 2017, MORRIS BROWN leased some of the space within at 301 West First Street, Suite 100, Dayton, Ohio to DAYTON PHARMACY.

41. On or about 2015, BROWN, began accepting approximately \$5000 per month from the owners of DAYTON PHARMACY disguised as “rent” to allow them to continue to operate the pharmacy.

42. MORRIS BROWN obtained substantial income and resources from his distribution and dispensing of controlled substances.

COUNTS ONE THROUGH SIX
UNLAWFUL DISTRIBUTION AND DISPENSING OF CONTROLLED
SUBSTANCES
[21 U.S.C. § 841]

THE GRAND JURY FURTHER CHARGES THAT:

43. Paragraphs 1 through 42 of the Indictment are realleged and incorporated by reference as though fully set forth herein.

On or about the dates set forth below, in the Southern District of Ohio, and elsewhere, the defendant MORRIS BROWN, a physician authorized to dispense controlled substances, did knowingly, intentionally, and unlawfully dispense and distribute, and cause to be dispensed and distributed, outside the usual course of professional practice and not for a legitimate medical purpose, the Schedule II controlled substances, as listed below:

Count	Patient	Approximate Date of Prescription	Controlled Substance(s)
1	R.A.	2/2/2015	Endocet
2	V.B.	2/17/2016	Hydrocodone, Morphine
3	D.E.	2/23/2016	Endocet, Methadone
4	D.B.	9/12/2016	Endocet, Methadone, Alprazolam, Oxycodone
5	B.S.	3/23/2016	Methadone, Endocet
6	T.A.	2/28/2017	Oxycodone, Fentanyl

In violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 18 U.S.C. § 2.

COUNT SEVEN

**MAINTENANCE OF PREMISES FOR UNLAWFUL DISTRIBUTION OR
DISPENSING**

[21 U.S.C. § 856]

44. Paragraphs 1 through 42 of the Indictment are realleged and incorporated by reference as though fully set forth herein.

45. Beginning on or around January 2012 and continuing through on or around November 2017, in the Southern District of Ohio and elsewhere, defendant MORRIS BROWN, did knowingly and intentionally open, lease, rent, use, and maintain a place, namely the premises located at 301 West First Street, Suite 100, Dayton Ohio, for the purpose of distributing Schedule II controlled substances, and other controlled substances

All in violation of 21 U.S.C. §§ 856(a)(1), 856(a)(2) and 18 U.S.C. § 2.

COUNT EIGHT

**CONSPIRACY TO OBTAIN CONTROLLED SUBSTANCES BY
MISREPRESENTATION, FRAUD, FORGERY, DECEPTION, OR SUBTERFUGE
[21 U.S.C. § 846]**

THE GRAND JURY FURTHER CHARGES THAT:

46. Paragraphs 1 through 42 of the Indictment are realleged and incorporated by reference as though fully set forth herein.

47. Beginning on or about January 1, 2012, within the Southern District of Ohio, and elsewhere, the defendants, ISMAIL ABUHANIEH, MAHMOUD RIFAI, MAHMOUD ELMIARI, YOHANNES TINSAE, and others known and unknown to the grand jury, did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree together with others known and unknown to the grand jury to knowingly, intentionally, and unlawfully acquire and obtain possession of controlled substances by misrepresentation, fraud, forgery, deception, and subterfuge.

In violation of Title 21, United States Code, Section 846 and Title 21, United States Code, Sections 843(a)(3).

OBJECT OF THE CONSPIRACY

The object of the conspiracy included, but was not limited to, the following:

48. For defendants to enrich themselves by obtaining proceeds of the conspiracy derived from DAYTON PHARMACY's sale of controlled substances to customers.

MANNER AND MEANS

49. During the course and in furtherance of the conspiracy, in or about June 2008, defendant ISMAIL ABUHANIEH incorporated Haya LLC with the Ohio Secretary of State with an address of 301 West First Street, Suite 100, Dayton, Ohio. Haya LLC did business under the name DAYTON PHARMACY.

50. During the course and in furtherance of the conspiracy, in or about August 2008, MAHMOUD RIFAI applied for and was granted a DEA registration for DAYTON PHARMACY to allow DAYTON PHARMACY to dispense controlled substances, including Schedule II controlled substances.

51. During the course and in furtherance of the conspiracy, ISMAIL ABUHANIEH and MAHMOUD RIFAI held themselves to be the owners of DAYTON PHARMACY located at 301 West First Street, Suite 100 in Dayton, Ohio.

52. During the course and in furtherance of the conspiracy, between approximately 2010 and 2015, YOHANNES TINSAE was the pharmacist in charge at DAYTON PHARMACY located at 301 West First Street, Suite 100 in Dayton, Ohio.

53. During the course and in furtherance of the conspiracy, between approximately on or about 2010 and on or about 2017, MAHMOUD ELMIARI was the pharmacy manager at DAYTON PHARMACY located at 301 West First Street, Suite 100 in Dayton, Ohio.

54. During the course and in furtherance of the conspiracy, ISMAIL ABUHANIEH incorporated DAYTON PHARMACY as a limited liability company in the State of Ohio.

55. During the course and in furtherance of the conspiracy, on or about August 2008, MAHMOUD RIFAI applied for, and was granted, a DEA license to dispense and distribute controlled substances, including Schedule II controlled substances, for DAYTON PHARMACY. On or about May 2017, MAHMOUD RIFAI reapplied using the DEA website for DAYTON PHARMACY's DEA license.

56. During the course and in furtherance of the conspiracy, ISMAIL ABUHANIEH, MAHMOUD RIFAI, and MAHMOUD ELMIARI opened bank accounts for use by DAYTON PHARMACY to fund aspects of the conspiracy.

57. During the course and in furtherance of the conspiracy, YOHANNES TINSAE and others were responsible for, and did, place orders to pharmaceutical companies to supply controlled substances to DAYTON PHARMACY, including to from SUPPLIER A, SUPPLIER B, and SUPPLIER C.

58. In or around May 2012, SUPPLIER A, a pharmaceutical supplier, refused to continue to supply DAYTON PHARMACY with controlled substances.

59. During the course and in furtherance of the conspiracy, in or around June 2012, ISMAIL ABUHANIEH applied to another pharmaceutical supplier, SUPPLIER B, to supply DAYTON PHARMACY with controlled substances.

60. During the course and in furtherance of the conspiracy, in or around August 2014, to induce SUPPLIER B to continue to supply pharmaceuticals to DAYTON PHARMACY, YOHANNES TINSAE, and others, made false statements to SUPPLIER B, to induce SUPPLIER B to sell controlled substance pharmaceuticals to DAYTON PHARMACY.

61. During the course and in furtherance of the conspiracy, in or around January 2016, to induce SUPPLIER B to continue to supply pharmaceuticals to DAYTON PHARMACY, ISMAIL ABUHANIEH, MAHMOUD ELMIARI, and others, made false statements to SUPPLIER B, to induce SUPPLIER B to sell controlled substance pharmaceuticals to DAYTON PHARMACY.

62. During the course and in furtherance of the conspiracy, in or around January 2017, MAHMOUD ELMIARI, and others, made false statements to a pharmaceutical supplier, SUPPLIER C, to induce SUPPLIER C to sell controlled substance pharmaceuticals to DAYTON PHARMACY.

63. During the course and in furtherance of the conspiracy, ISMAIL ABUHANIEH, MAHMOUD RIFAI, MAHMOUD ELMIARI, YOHANNES TINSAE, and other conspirators known and unknown to the Grand Jury obtained substantial income and resources, and enriched themselves from the conspiracy to obtain controlled substances by misrepresentation, fraud, forgery, deception, and subterfuge.

All in violation of Title 21, United States Code, Section 846.

FORFEITURE ALLEGATIONS

The GRAND JURY further alleges:

64. The allegations contained in Counts One through Eight of this Indictment are incorporated here for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982.

65. Upon conviction of a violation of Title 21, or United States Code, Sections 841, 846 or 856, as alleged in Counts One through Eight of this Indictment, the defendants shall forfeit to the United States, irrespective of any provision of State law

a. any property, real or personal, that constitutes or is derived, directly or indirectly, as the result of such violation, including but not limited to the premises located at 301 West First Street, Suite 100, Dayton, Ohio; and

b. any DEA license(s) for BROWN, ABUHANIEH, RIFAI, TINSAE, and ELMIARI;

c. any of the defendants' property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

66. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- i. cannot be located upon the exercise of due diligence;
- ii. has been transferred or sold to, or deposited with, a third party;
- iii. has been placed beyond the jurisdiction of the Court;
- iv. has been substantially diminished in value; or

v. has been commingled with other property that cannot be subdivided without difficulty;

the defendants shall forfeit to the United States any other property of the defendant, up to the value of the property described above, pursuant to Title 21, United States Code, Section 853(p).

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

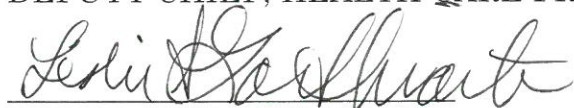
A TRUE BILL:



FOREPERSON

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