

Eastern District of Kentucky

FILED

JUN 14 2018

AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
LONDON**

UNITED STATES OF AMERICA

V.

INDICTMENT NO. 18-30-GFVT-HAI

KIMBERLY JONES

* * * * *

THE GRAND JURY CHARGES:

At all times relevant to this Indictment:

1. **KIMBERLY JONES, R. Ph.**, was a registered pharmacist practicing in Williamsburg, Kentucky.
2. **JONES** owned and operated **KIM'S HOMETOWN PHARMACY, INC.** in Williamsburg, Kentucky, which is in the Eastern District of Kentucky.

BACKGROUND ON CONTROLLED SUBSTANCES

3. The Controlled Substances Act ("CSA") governed the manufacture, distribution, and dispensing of controlled substances in the United States.
4. Under the CSA, the United States Drug Enforcement Administration ("DEA") regulated certain pharmaceutical drugs designated as "controlled substances" because of their potential for abuse or dependence, their accepted medical use, and their accepted safety for use under medical supervision. *See* 21 U.S.C. § 802(6).
5. The Drug Enforcement Administration issued registration numbers to qualifying practitioners, including pharmacists, which permitted them to dispense

Schedule II, III, IV, and V controlled substances consistent with the terms of that registration. 21 U.S.C. § 822.

6. Generally, pharmacists could only lawfully distribute controlled substances to individuals with a valid prescription issued by an authorized health practitioner. 21 U.S.C. § 829.

7. “A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.” 21 C.F.R. § 1306.04(a).

8. Oxycodone and oxymorphone were narcotic opioid analgesic drugs classified as Schedule II controlled substances.

COUNTS 1-26
21 U.S.C. § 841(a)(1)

9. The allegations set forth in Paragraphs 1 through 8 above are included in these counts.

10. On or about the dates listed below, in Whitley County, in the Eastern District of Kentucky,

KIMBERLY JONES

did knowingly and intentionally distribute and dispense, outside the scope of professional practice and not for a legitimate medical purpose, a Schedule II controlled substance, as

set forth below:

Count	Date Filled	Patient	Prescription Number	Drug Name
1.	February 13, 2014	F.T.	N124192	Oxycodone 30 mg
2.	March 2, 2017	L.M.	N224635	Oxymorphone 7.5 mg
3.	March 2, 2017	L.M.	N224634	Oxycodone 15 mg
4.	August 22, 2017	E.J.	N237064	Oxycodone 30 mg
5.	August 22, 2017	E.J.	N237062	Oxymorphone 30 mg
6.	August 31, 2017	L.V.	N237781	Oxycodone 30 mg
7.	August 31, 2017	L.V.	N237779	Oxymorphone 20 mg
8.	August 31, 2017	T.M.	N237786	Oxycodone 30 mg
9.	August 31, 2017	T.M.	N237785	Oxymorphone 30 mg
10.	September 27, 2017	K.H.	N239592	Oxymorphone 7.5 mg
11.	September 27, 2017	K.H.	N239593	Oxycodone 30 mg
12.	December 22, 2017	C.C.	N245188	Oxycodone 15 mg
13.	December 22, 2017	C.C.	N245187	Oxycodone 30 mg
14.	December 28, 2017	B.W.	N245349	Oxycodone 30 mg
15.	January 15, 2018	D.W.	N246468	Oxycodone 15 mg
16.	January 15, 2018	D.W.	N246467	Oxycodone 30 mg
17.	January 17, 2018	D.W.	N246660	Oxycodone 15 mg
18.	January 17, 2018	D.W.	N246659	Oxycodone 30 mg
19.	January 18, 2018	L.V.	N246727	Oxycodone 30 mg
20.	January 18, 2018	L.V.	N246728	Oxymorphone 20 mg
21.	January 18, 2018	T.M.	N2466718	Oxycodone 30 mg
22.	January 18, 2018	T.M.	N246725	Oxymorphone 20 mg
23.	January 19, 2018	K.H.	N246779	Oxycodone 30 mg
24.	January 19, 2018	K.H.	N246778	Oxymorphone 10 mg
25.	January 30, 2018	D.W.	N247438	Oxycodone 30 mg
26.	January 30, 2018	D.W.	N247439	Oxycodone 15 mg

all in violation 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

COUNT 27
21 U.S.C. § 856(a)(1)

12. The allegations set forth in Paragraphs 1 through 11 above are included in this count.

13. Beginning in or about January 2010, and continuing through on or about

January 2018, in Whitley County, in the Eastern District of Kentucky,

KIMBERLY JONES

did knowingly and intentionally open and maintain and manage and control, whether permanently or temporarily, a place, namely, **KIM'S HOMETOWN PHARMACY**, 865 US-25W, Williamsburg, Kentucky, for the purpose of distributing, outside the scope of professional practice and not for a legitimate medical purpose, a quantity of pills containing oxycodone and oxymorphone, a Schedule II controlled substance, in violation of 21 U.S.C. § 841(a)(1), all in violation of 21 U.S.C. § 856(a)(1).

COUNT 28
18 U.S.C. § 1347

BACKGROUND ON HEALTH CARE PAYERS

14. Medicare was a health care benefit program under 18 U.S.C. § 24(b); that is, a public or private plan or contract, affecting commerce, under which medical benefits, items and services were provided to individuals.

15. Medicare Part D subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. Part D benefits were administered by private insurance plans that were reimbursed by Medicare through the Centers for Medicare and Medicaid Services. Generally, Medicare covered these costs if, among other requirements, they were medically necessary and ordered by a physician.

16. Medicaid was a health care benefit program under 18 U.S.C. § 24(b); that is, a public or private plan or contract, affecting commerce, under which medical benefits, items and services were provided to individuals. Medicaid was jointly funded

by the states and the federal government. Among other services, Medicaid reimbursed pharmacies for prescription drugs dispensed to Medicaid beneficiaries. Generally, Medicaid covered these costs if, among other requirements, they were medically necessary and ordered by a physician.

17. A number of private insurers which provided coverage for prescription medications to Kentucky residents also constituted health care benefit programs under 18 U.S.C. § 24(b); that is, they were public or private plans or contracts, affecting commerce, under which medical benefits, items and services were provided to individuals.

18. Generally, health care benefit programs reimbursed pharmacies for prescription drugs, but only if the prescription drugs were lawfully prescribed by a doctor and actually dispensed to the patient.

THE SCHEME AND ARTIFICE TO DEFRAUD

19. From on or about May 2014 through on or about March 2018, the exact dates being unknown, in Whitley County, in the Eastern District of Kentucky, and elsewhere, **JONES** devised and executed, or attempted to execute, a scheme and artifice to defraud health care benefit programs by means of false and fraudulent pretenses, representations and promises.

20. It was part of the scheme to defraud that:

a. **JONES**, a registered pharmacist, owned and operated **KIM'S**

HOMETOWN PHARMACY.

b. Some of **KIM'S HOMETOWN PHARMACY's** customers received

prescriptions for prescription drugs with a refill option from their treating providers.

- c. **JONES** entered, or caused her employees to enter, information into her pharmacy's dispensing systems indicating that refills for drugs had been dispensed, even though her pharmacies never physically dispensed the drugs.
- d. By doing so, **JONES** submitted, or caused to be submitted, claims for payment for those supposedly refilled prescription drugs, even if those drugs were never dispensed to a patient.

EXECUTIONS OR ATTEMPTED EXECUTIONS OF THE SCHEME

21. In furtherance of this scheme, **JONES** knowingly submitted, or caused to be submitted, claims for payment to health care benefit programs for numerous prescription drugs that were not actually dispensed, including, among others, those identified in the chart below:

BILLED DATE	DRUG	PATIENT	PAYER
05/15/2014	Abilify 15 mg	P.P.	Medicare
02/06/2015	Lidoderm Patch	J.B.	Medicare
06/12/2017	Ventolin HFA Inhaler	J.C.	Medicare
11/16/2017	Levetiracetam 750 mg	A.N.	Medicaid
12/05/2017	Ventolin HFA Inhaler	J.C.	Medicare
12/07/2017	Diphenhydramine 50 mg	G.A.	Medicaid

THE CHARGE

22. From on or about May 2014 through on or about March 2018, the exact dates being unknown, in Whitley County, in the Eastern District of Kentucky, and

elsewhere,

KIMBERLY JONES

knowingly and willfully executed, and attempted to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, Medicaid and other health care benefit programs, and to obtain money and property owned by, and under the custody of Medicare, Medicaid and other health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services by means of false and fraudulent pretenses, to wit, causing claims for payment to be submitted for prescription drugs that were never dispensed, all in violation of 18 U.S.C. § 1347.

FORFEITURE ALLEGATIONS

21 U.S.C. § 853

18 U.S.C. § 982(a)(7)

1. In committing the felony offenses alleged in Counts 1 – 27 of this Indictment, the same being punishable by imprisonment for more than one year, **JONES** used and intended to use the below-described property to commit and to facilitate the commission of the said controlled substance violation, and the below-described property constitutes proceeds obtained directly and indirectly as a result of the commission of the aforesaid violations of 21 U.S.C. §§ 841(a)(1) and 856(a)(1).

2. Similarly, the property listed below constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense alleged in Count 28 of this Indictment.

REAL PROPERTY:

865 US-25W, Williamsburg, Kentucky, parcel #: 111-30-00-045.08, also described as 1 ST BLDG & PRCL 6-4 @ S HWY 25W

MONEY JUDGMENT:

\$400,000, which sum represents the gross proceeds in aggregate obtained by defendant as a result of the aforesaid violations.

LICENSE TO PRACTICE:

Kentucky Board of Pharmacy License 009743 and any rights and privileges associated with the practice of pharmacy in the Commonwealth of Kentucky


By virtue of the commission of the felony offenses charged in this Indictment, any and all interest **KIMBERLY JONES** have in the above-described property is vested in the United States and hereby forfeited to the United States pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 982(a)(7).

If any of the property listed above, as a result of any act or omission of the Defendant(s),

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (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 divided without difficulty,

it is the intent of the United States to seek the forfeiture of any other property in which the defendant has an interest, up to the value of the property and proceeds described above.

A TRUE BILL


ROBERT M. DUNCAN, JR.
UNITED STATES ATTORNEY

PENALTIES

COUNTS 1 – 26: Not more than 20 years imprisonment, a fine of not more than \$1,000,000, and supervised release of at least 3 years.

COUNT 27: Not more than 20 years imprisonment, a fine of not more than \$500,000, and supervised release of at not more than 3 years.

COUNT 28: Not more than 10 years imprisonment, a fine of not more than \$250,000, and a term of supervised release of not more than 3 years.

PLUS: Mandatory special assessment of \$100 per count.

PLUS: Restitution, if applicable.

PLUS: Forfeiture as listed.