

EAST HAMPTON TOWN JUSTICE COURT
COUNTY OF SUFFOLK, STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK, :

- against - :

MICHAEL CHAIT, M.D. :

Defendant. :

FELONY COMPLAINT

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Special Investigator KEN KARP, Shield No. 1051, of the Office of the Attorney General, Medicaid Fraud Control Unit (MFCU), 120 Broadway, New York, New York 10271, being duly sworn, deposes and says that from on or about January 1, 2007, to on or about March 7, 2007, the defendant MICHAEL CHAIT and others, at 524 Montauk Highway, Suite 102, Amagansett, New York and other locations in the County of Suffolk and elsewhere in the State of New York,

the defendant COMMITTED THE OFFENSES OF:

P.L. §105.15 - CONSPIRACY IN THE SECOND DEGREE (ONE COUNT)
P.L. §105.10(1) - CONSPIRACY IN THE FOURTH DEGREE (ONE COUNT)
P.L. §155.40 - GRAND LARCENY IN THE SECOND DEGREE (ONE COUNT)

In that:

- The defendant, with others known and unknown to your deponent, with intent that conduct constituting the class A felonies of criminal sale of a controlled substance in the first and second degrees and criminal possession of a controlled substance in the second degree be performed, agreed to engage in or cause the performance of such conduct;
- The defendant, with others known and unknown to your deponent, with intent that conduct constituting the class B felonies of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree and conduct constituting the Class C felonies of criminal sale of a prescription for a controlled substance, criminal possession of a controlled substance in the fourth degree, and grand larceny in the second degree agreed to engage in or cause the performance of such conduct;

OVERT ACTS

In furtherance of the conspiracy alleged and to effect the objects thereof, the following overt acts were committed in the County of Suffolk:

- a. On or about February 15, 2007, the defendant issued a prescription for OxyContin 80 mg. to an MFCU undercover investigator known to your deponent.
- b. On or about February 15, 2007 the defendant issued a prescription for Dilaudid 4 mg. to an MFCU undercover investigator known to your deponent.
- c. On or about February 21, 2007 the defendant issued a prescription for OxyContin 80 mg. to an MFCU undercover investigator known to your deponent.

- d. On or about February 21, 2007 the defendant issued a prescription for Dilaudid 4 mg. to an MFCU undercover investigator known to your deponent.
- e. On or about February 27, 2007 the defendant issued a prescription for OxyContin 80 mg. to an MFCU undercover investigator known to your deponent.
- f. On or about February 27, 2007 the defendant issued a prescription for Dilaudid 4 mg. to an MFCU undercover investigator known to your deponent.
- g. On or about January 11, 2007, the defendant submitted or caused to be submitted a request for prior approval to the Medicaid program in order to enable a patient to obtain Dilaudid.
- h. On or about January 22, 2007 the defendant submitted or caused to be submitted a request for prior approval to the Medicaid program in order to enable a patient to obtain OxyContin.
- i. On or about January 23, 2007, the defendant submitted or caused to be submitted a request for prior approval to the Medicaid program in order to enable a patient to obtain OxyContin.
- j. On or about January 24, 2007 the defendant submitted or caused to be submitted a request for prior approval to the Medicaid program in order to enable a patient to obtain OxyContin.
- k. On or about January 25, 2007, the defendant submitted or caused to be submitted a request for prior approval to the Medicaid program in order to enable a patient to obtain OxyContin. and

- The defendant, acting in concert with others known and unknown to your deponent, submitted and caused to be submitted, claims to the fiscal agent of the NYS Medicaid program, for reimbursement for certain prescription medications, when as the defendant well knew, the prescriptions written by him were not written in good faith in the course of his professional practice and were not medically necessary. Such claims were paid by the NYS Medicaid program to various pharmacies in Bronx County and elsewhere in New York State in an amount in excess of fifty thousand dollars.

On or about February 15, 2007 (2 Counts), on or about February 21, 2007 (2 Counts), and on or about, February 27, 2007 (2 Counts),

the defendant COMMITTED THE OFFENSE OF:

P.L. §220.65-CRIMINAL SALE OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE

In that:

Defendant, being a practitioner, namely a physician, licensed and otherwise permitted to dispense and administer controlled substances under Article 33 of the Public Health Law, in the course of his licensed professional practice, knowingly and unlawfully sold prescriptions for controlled substances other than in good faith in the course of his professional practice.

This complaint is based on information and belief the sources of which are as follows:

Deponent states that I am one of several investigators assigned to an investigation of defendant, a physician, and numerous other individuals who acted together to unlawfully

obtain prescriptions for and then sell controlled substance prescription medications that in major part were billed to the NYS Medicaid program. These medications are OxyContin and Dilaudid. Both of these are narcotic controlled drugs as defined by the Penal and Public Health Laws. During the investigation, I have learned that hundreds of Medicaid-eligible patients who are residents of New York City (and elsewhere) agreed, frequently at the request of recruiters and steerers, to request prescriptions for these narcotic drugs from the defendant knowing they were medically unnecessary, obtain the medications from a pharmacy and sell the medications in exchange for a sum of United States currency.

Deponent states that at all times relevant herein, the defendant has been a physician licensed to practice medicine in the State of New York and maintains an office in Amagansett, Suffolk County, New York.

Based on your deponent's knowledge, training and experience, the following factors cause me to believe that the scenario described herein is indicative of unlawful prescription drug diversion: the practice consists of a high percentage of Medicaid patients, who are enrolled in the Medicaid program because they are poor, who nevertheless pay \$200 cash to see the physician; the physician writes prescriptions for as many as fifty patients per day; the patients drive over one hundred miles each way to get to the office of the physician, along the way bypassing countless physicians who offer a legitimate pain management practice, many of whose services would be paid in full by Medicaid; a high percentage of patients present the same alleged symptoms; there are no known laboratory tests or other diagnostic procedures ordered by the physician to confirm any pain-related diagnoses; the same high percentage of patients receive not only the same medications but the same dosages; and the drugs have a high street value.

Based on my training, knowledge and experience, I am aware that Oxycontin 80 mg., the highest strength currently available, is a medication that may be prescribed by a physician for a patient who is experiencing substantial and chronic pain. Oxycontin is designed to be a time-released medication that allows a patient to experience pain relief over a period of time. It can also be abused by drug addicts, is highly addictive and is frequently unlawfully resold to drug abusers¹. In addition, I am aware that prior to issuing a prescription for this drug to a patient, a physician should confirm that whether the patient is opiate naïve (no prior experience) or tolerant (prior experience). The danger to the non-opiate tolerant patient is that this narcotic can substantially depress central nervous system functions, such as heartbeat and breathing, to the extent that a patient can overdose and experience cardiac or respiratory arrest. Furthermore, combinations with certain other prescription drugs can be toxic and possibly fatal.

Similarly, based on your deponent's training, knowledge and experience, I am aware that Dilaudid 4 mg. is a medication that can be prescribed by a physician for a patient who is experiencing substantial intermittent, as opposed to chronic, pain. Similar to Oxycontin, Dilaudid can also be abused by drug addicts, is highly addictive and is frequently unlawfully resold to drug abusers.

¹ Both OxyContin 80mg. and Dilaudid 4 mg. sell for approximately \$15 per tablet on the illicit market.

As your deponent relates herein based on data compiled by MFCU Associate Special Auditor Investigator (ASAI) Kristin McMorro, in addition to the nature of the drug and its strength, the substantial quantity of pills prescribed by the defendant in an initial superficial visit is indicative that the prescriptions are written other than in good faith.

Part of this investigation consisted of obtaining appointments to see the defendant and have MFCU investigators pose as patients and record the conversations (audio and video) in order to determine whether controlled substance prescriptions issued by the defendant were based on the legitimate medical need of the "patient".

Your deponent states that three undercover investigators posed as patients. The appointments occurred on February 15, 2007, February 21, 2007, and February 27, 2007. The first undercover visit involved one investigator. The second undercover visit involved that individual and another individual identified as his friend. The third undercover visit involved the first undercover and a different friend. In the latter two instances, both investigators were present with the defendant during the entire meeting with him, with the exception of a brief period during the third shop.

Your deponent has reviewed the recordings and spoken to the undercover investigators. With respect to the February 15, 2007, visit, the undercover told the defendant that he had sickle cell disease and had been diagnosed many years earlier. The defendant did not request any proof of the diagnosis. The undercover stated he had pain. The defendant did not ask the undercover whether the pain was frequent, intense or what part(s) of the body were affected. He also did not ask the undercover what medications he had taken previously, how often he had taken them, or what affect such medications may have had on alleviating the pain. The defendant did not ask whether the patient had ever taken Oxycontin or Dilaudid (or similar opiate medications) at all regardless of the strength of the drug or the quantity. Instead, the defendant made extensive inquiry and offered lengthy advice about the "patient" investigator's history of smoking cigarettes or drinking alcohol. The defendant wrote two prescriptions, in the name used by the undercover, with a Bronx county address, one for Oxycontin 80 mg., 360 tablets and the second for Dilaudid 4 mg., 360 tablets.

With respect to the second undercover visit of February 21, 2007, this individual stated he had back pain. As before, the defendant did not ask the undercover whether the pain was frequent, intense or what part(s) of the body were affected. He also did not ask the undercover what medications he had taken previously, how often he had taken them, or what affect the medication had on alleviating the pain. The defendant did not ask whether the patient had ever taken Oxycontin or Dilaudid (or similar opiate medications) at all regardless of the strength of the drug or the quantity. The defendant engaged in a similar dialogue with the second undercover about smoking and alcohol to that he had previously had with the first undercover. The defendant wrote two prescriptions, in the name used by the undercover, with a Bronx county address, one for Oxycontin 80 mg., 360 tablets and the second for Dilaudid 4 mg., 360 tablets.

With respect to the third undercover visit of February 27, 2007, this investigator stated that prior to her

appointment with the defendant, she observed other patients of the defendant. Some of these individuals were called in by the defendant as a group even though it did not appear to the investigator that they were a family. Moreover, this investigator stated that she observed a member of a group request an appointment in the future for a friend. When asked for the name of the friend by the defendant's receptionist, the person replied, "I don't know."

When the female undercover was called in to see the defendant, the first undercover accompanied her as well. During her time with the defendant, the doctor spoke with the first undercover as much or more than the female undercover who was the scheduled "patient" for that day. As on the two prior dates, the defendant spent a great deal of time discussing smoking rather than making any attempt to examine the undercover. At first, the female undercover told the defendant that nothing was wrong with her. After a break, during which the two undercover investigators spent some time in the waiting area, they were escorted back to an examination room. The female undercover now reported pain from a fall down some stairs several years ago. The defendant failed to make any useful determination that this "patient" was opiate tolerant or determine her history of being treated for this pain. As the appointment was concluding and the doctor was writing out the prescriptions, the defendant inquired whether a quantity of 240 was O.K., to which the first undercover, not the "patient", responded that he would "take it". The female undercover received prescriptions for OxyContin 80 mg., 240 tablets, and Dilaudid, 4 mg., 240 tablets also for a Bronx address.

Your deponent is aware that investigators from NYS Health Department, Bureau of Narcotic Enforcement (BNE) have arrested at least five individuals related to this investigation. With respect to five of these individuals, each entered a pharmacy in the Bronx, which is owned by a pharmacist known to your deponent, submitted a prescription written by the defendant, and obtained the OxyContin. Each of the five individuals was interviewed by an investigator from BNE. They all admitted that they had no medical need for the OxyContin and had obtained the prescription from the defendant with the intent to sell the drugs for cash.

Your deponent has interviewed the pharmacist referred to in the previous paragraph. This individual is assisting in this investigation and has assisted in other investigations conducted by the MFCU and other law-enforcement agencies. The pharmacist informed your deponent that he has spoken on the telephone to the defendant previously in order to obtain diagnostic information pertaining to a prescription written by the defendant. The telephone number called is listed on the prescriptions issued to the defendant by DOH based on information obtained from the defendant. These prescriptions have been presented to the pharmacist by numerous patients on numerous occasions. The sum and substance of the conversation is that the pharmacist asked questions relating to the defendant's diagnosis that a particular patient of the defendant had sickle cell anemia. The defendant responded by stating the patient had a particular stage of sickle cell anemia. The pharmacist also asked whether the patient had "brain or lumbar" type sickle cell. The defendant's responses to both questions were nonsensical medically, were entirely made up out of whole cloth, and reflected his complete unfamiliarity with this disease.

Consistent with this observation, your deponent is also aware that on February 7, 2007, United States Drug Enforcement Administration (DEA) Drug Diversion New York area Group Supervisor Richard L. Springer and Diversion Investigator Joseph Mendez went to the defendant's medical office and interviewed him. In order to be able to prescribe controlled substances, physicians need to be registered with DEA. Your deponent has read the written report of that interview prepared by the DEA investigators. In sum and substance, the defendant stated that he was aware that a high percentage of his patients come from NYC and travel several hours to get to his office in Amagansett. He also stated that he charges \$200 cash for each visit. The defendant also stated that he believed that a high percentage of his patients have sickle cell anemia and were former patients of a now deceased physician whose practice was in the Bronx. The defendant stated that he is able to diagnose patients with sickle cell anemia (as well as back pain) by conducting an oral examination alone. The defendant stated that prior to January 2007 he had a "regular practice", consisting of a total of 50 patients and never treated sickle cell patients. Your deponent is aware that without utilizing diagnostic procedures, such as a blood test, it is impossible to confirm the existence of sickle cell anemia, which is a blood disorder.

Your deponent is familiar with information submitted by representatives from the pharmaceutical companies that manufacture Oxycontin and Dilaudid concerning the number of milligrams in these narcotic medications. OxyContin contains the active ingredient Oxycodone and Dilaudid contains the active ingredient Hydromorphone. Both of these drugs are classified as narcotics pursuant to PHL §3306. In addition, based on my prior experience as an investigator with BCS, your deponent is familiar with the mathematical formula used to convert milligrams to ounces. Based on this information, your deponent states that 360 Oxycontin 80 mg. weighs approximately 3.42 ounces. Your deponent has examined hundreds of prescriptions written by the defendant and states that the defendant wrote prescriptions in these quantities for these drugs frequently. Similarly, your deponent states that 240 Dilaudid 4 mg. weighs approximately 1.14 ounces.

Deponent further states that ASAI McMorro has reviewed the claims submitted by and payments made by the NYS Medicaid program to various pharmacies for prescriptions written by the defendant for the time period January 1, 2007, until February 14, 2007. Specifically, ASAI McMorro focused on claims submitted for the individuals whose Medicaid cards were used to submit claims for the two narcotic drugs, Oxycontin 80 mg. and Dilaudid 4 mg. The defendant wrote approximately two hundred seventy-eight prescriptions for Oxycontin 80 mg.² and thirty-nine prescriptions for Dilaudid 4 mg.³ encompassing in excess of two-hundred fifty individuals. The NYS Medicaid program paid pharmacies over \$700,000 for these claims.⁴ Your deponent is aware that the Medicaid program requires a physician to submit a prior approval without which Medicaid will not pay for OxyContin. Your deponent is aware that the defendant has submitted numerous prior approval requests for his Medicaid-eligible patients.

Comparing the number of prescriptions written by the defendant for these two narcotic drugs during the two-month

² The majority of these prescriptions are written for 360 tablets.

³ The majority of these prescriptions are written for either 240 or 360 tablets.

⁴ The time period for these payments is from January 1, 2007 until on or about February 27, 2007.

until November 30, 2006, the defendant wrote one prescription for Oxycontin 80 mg., for 20 tablets, and one prescription for Hydromorphone 4 mg., the generic version of Dilaudid, for 30 tablets that were paid for by Medicaid.

False statements in this document are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law.

Sworn to before me on
March 2007

Special Investigator KEN KARP
Deponent