IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. SPALITTO'S PHARMACY, L.C., *Defendant*.	Civil Action No. 4:21-cv-00600

COMPLAINT FOR PERMANENT INJUNCTION

The United States of America brings this complaint for permanent injunction against defendant Spalitto's Pharmacy, L.C. (the "Defendant") and alleges as follows:

INTRODUCTION

1. Starting no later than 2016, the Defendant, a pharmacy operating in Kansas City, Missouri, has failed to implement or follow sufficient controls to guard against diversion of controlled substances. The Defendant violated the Controlled Substances Act by filling two different types of prescriptions.

2. The first type of prescriptions consists of over one hundred forged narcotic prescriptions presented by a single individual. The individual, fired by her treating physician in early 2016, forged the prescriptions. *See United States v. Gaston*, Case No. 4:20-cr-149-HFS. The Defendant filled the narcotic prescriptions for years despite the existence of significant red flags, including, *inter alia*: (1) the paper prescriptions appeared to be photocopies; (2) the dosage and quantity increased to result in an amount allegedly prescribed of more than triple the amount recommended by the Centers for Disease Control and Prevention Guideline for Prescribing Opioids for Chronic Pain; (3) the individual had insurance but chose to pay out-of-pocket; (4) the individual's physical condition was deteriorating; and (5) the prescription drug monitoring

program revealed that the Defendant was the only pharmacy who filled prescriptions for a particular physician from August 22, 2018, through June 19, 2019. The Defendant did not verify the prescriptions with the physician.

3. The second type of prescriptions consists of a group of over one hundred prescriptions presented, collectively, by approximately one dozen different individuals. All the prescriptions purport to be prescribed by the same physician. Members of the group presented prescriptions with substantially similar dosages and quantities for highly addictive and often-abused narcotics. The Defendant filled the narcotic prescriptions for years despite the existence of significant red flags, including, *inter alia*: (1) suspicious paper prescriptions, one or more with alterations to the physician's DEA registration number; (2) the physician's alleged uniform prescribing for a high quantity and dosage of immediate-release oxycodone; (3) the fact that the group members did not generally fill nonnarcotic prescriptions with the Defendant; (4) with limited exceptions, the group members all paid out-of-pocket; and (5) that the prescription drug monitoring program revealed that the Defendant was the only pharmacy who filled prescriptions for a particular prescriber from September 18, 2017, through March 26, 2020. The Defendant did not verify the prescriptions with the physician until February 2020, at which time the physician stated that he had been retired for about a year.

4. In sum, on over two hundred occasions since the beginning of 2016, the Defendant dispensed prescription drugs in violation of the Controlled Substances Act and its implementing regulations.

5. The United States seeks to prevent continuing and substantial injury to the public caused by controlled substance diversion by bringing this action for a permanent injunction and other equitable relief under 21 U.S.C. § 882(a) to enjoin the Defendant's violation of:

(1) 21 U.S.C. § 841(a)(1), by dispensing controlled substances outside the usual course of the professional practice of pharmacy; and

(2) 21 U.S.C. § 842(a)(1), by dispensing controlled substances in violation of 21 U.S.C. § 829 and the Controlled Substances Act's implementing regulations.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action under 21 U.S.C. § 882(a); 21 U.S.C. §§ 841(a)(1), 842(a)(1); and 28 U.S.C. §§ 2201–02.

7. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) and (2).

PARTIES

8. Plaintiff is the United States of America.

9. The Defendant is a Missouri Limited Liability Company operating a retail pharmacy in Kansas City, Missouri, within Jackson County. The Defendant engaged in the conduct described in this Complaint from within the Western District of Missouri.

FACTS

10. Since at least 2016, the Defendant has been violating the Controlled Substances Act by enabling the diversion of narcotics. The Defendant dispenses narcotic prescriptions that present numerous red flags without taking steps to resolve the red flags or implementing or following processes sufficient to guard against diversion of controlled substances.

The Amy Gaston prescriptions

11. On or about January 14, 2016, Amy Gaston was terminated as a patient by her physician, G.B. Gaston has not been treated by G.B. since that time, and G.B. did not write or otherwise authorize prescriptions for Gaston after that date.

12. At the time, G.B. practiced in Olathe, Kansas, and Gaston's address was listed as Shawnee, Kansas.

13. From January 2016 through June 2019, Gaston presented the Defendant at least 122 forged prescriptions for narcotics purporting to be written by G.B.

14. None of the 122 forged prescriptions bore G.B.'s authentic signature or seal.

15. Many of the forged prescriptions were multiple copies of the same prescription, bearing the same alleged "Transaction ID" with only handwritten differences.

16. Over time, Gaston increased the amount of oxycodone prescribed on the forged prescriptions and began writing an additional prescription for a high strength (60mg) of OxyContin.

17. The Defendant's Pharmacist-in-Charge Peter A. Spalitto ("Spalitto") and the Defendant's other staff knew that the pharmacy had an obligation to verify with the physician when there was a change in the prescription, such as a change in strength or the quantity of dosage units.

18. No one on behalf of the Defendant contacted G.B. to verify the authenticity or instructions on any of the 122 forged prescriptions.

19. On August 20, 2018, G.B.'s DEA registration was terminated and G.B. was no longer authorized to issue prescriptions for controlled substances.

20. The only other G.B. prescriptions filled at the Defendant's pharmacy since 2015 were in 2015 and 2017. Gaston was the only individual filling G.B. prescriptions at the Defendant's pharmacy in 2018 and 2019.

21. Gaston came into the Defendant's pharmacy on or about June 11, 2019, with a forged prescription for 120 oxycodone 30mg tablets.

22. At that time, Spalitto observed that Gaston displayed noticeable signs of physical deterioration.

23. Spalitto told Gaston that he would not fill the prescription until he spoke with G.B.

24. However, neither Spalitto nor any of the Defendant's staff contacted G.B.

25. The next day, June 12, 2019, Spalitto nonetheless filled the forged prescription for #120 oxycodone 30mg tablets.

26. The Defendant also filled another forged prescription from Gaston a week later, on June 19, 2019, for #70 oxycodone 15mg tablets.

27. In whole, the Defendant dispensed narcotics to Gaston for 122 forged prescriptions.

28. Thirty-two of the 122 forged prescriptions were allegedly prescribed by G.B. at a time when G.B. did not have authority to prescribe controlled substances.

29. In September 2019, DEA asked Spalitto how the Defendant ensured that a prescription is prescribed by an authorized DEA registrant. Spalitto asserted that he had no way to verify when a prescriber's DEA registration is invalid and that he generally relied on word of mouth, including information obtained from customers and insurance providers.

30. In response, DEA provided Spalitto information on how to obtain access to query DEA's registration database, a resource already freely available to him. *See* CSA Registration Validation Tool, https://apps.deadiversion.usdoj.gov/webforms2/spring/validationLogin. DEA has made this free tool available to DEA registrants, like the Defendant, since April 2007. DEA also provided information on commercial software options, like DEALookup.com, which the Defendant could decide to purchase. The software automates the process of validating the DEA

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