

No. 20-1410

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**In the Supreme Court of the United States**

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DR. XIULU RUAN,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**On Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

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**JOINT APPENDIX**

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## APPENDIX A

### UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

No. 15-CR-00088

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,  
*Defendants.*

### RELEVANT DOCKET ENTRIES

Date	Dkt. No.	Docket Text
04/28/2016	269	SECOND SUPERSEDING INDICTMENT as to John Patrick Couch (1) counts 1ss, 2ss-4ss, 5ss-7ss, 13ss-14ss, 15ss, 16ss-18ss, 19ss, Xiulu Ruan (2) counts 1ss, 2ss-4ss, 8ss-12ss, 15ss, 16ss-18ss, 19ss, 20ss, 21ss-22ss. (Attachments: # 1 Penalty Page, # 2 Signed Indictment, # 3 Notice to the Court) FORFEITURE ALLEGATION (mpp) (Entered: 04/29/2016)
05/04/2016	276	ORDER, Defendants John Patrick Couch and Xiulu Ruan were arraigned in accordance

Date	Dkt. No.	Docket Text
		<p>with Fed.R.Crim.P. 10 on the 269 second superseding indictment. Both Defendants entered the plea of NOT GUILTY. Motions to continue trial (Docs. 263 , 268 , 274 ) GRANTED. This case is specially set for jury selection on October 27, 2016, with the trial commencing immediately thereafter before Senior District Judge Callie V. S. Granade. Status conference before the undersigned set for August 29, 2016 at 10:00 a.m. in Courtroom 1A. Waivers of Right to Speedy Trial due from Defendants by 5/10/2016. Deadline for all pretrial motions and all notices or demands is EXTENDED to June 3, 2016. Deadline for motions to compel is EXTENDED to July 29, 2016. Government shall tender its expert reports no later than May 25, 2016. Defendants shall tender their expert reports no later than July 8, 2016. Signed by Magistrate Judge Sonja F. Bivins on 5/4/2016. (mab) (Entered: 05/04/2016)</p>
12/23/2016	420	<p>ORDER as to John Patrick Couch, Xiulu Ruan DENYING Dft Ruan's 374 Motion to Dismiss Second Superseding</p>

Date	Dkt. No.	Docket Text
		Indictment, In Part, as set out, DENYING Dft Couch's 378 Motion to Dismiss Second Superseding Indictment, In Part, as set out, DENYING Dft's Couch's 379 Motion to Dismiss Certain Counts Within the Indictment or, Alternatively, Motion for Bill of Particulars as set out. Signed by Senior Judge Callie V. S. Granade on 12/23/2016. (tot) (Entered: 12/23/2016)
01/05/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury trial as to John Patrick Couch, Xiulu Ruan begun on 1/5/2017. Court Reporter Roy Isbell. Trial will resume on 1/6/2017 at 9:00 a.m. (mab) (Entered: 01/05/2017)
01/06/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/6/2017. Court Reporter Roy Isbell. Trial to resume before jury on 1/9/17 at 9:00 a.m. <b>Counsel are to report at 8:30 a.m. for conference on issues discussed on the record.</b> (mab) (Entered: 01/06/2017)
01/09/2017		Minute Entry for proceedings held before Senior Judge Callie

<b>Date</b>	<b>Dkt. No.</b>	<b>Docket Text</b>
		V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/9/2017. Court Reporter Roy Isbell. Trial will resume on Thursday, January 12, 2017 at 9:00 a.m. (mab) (Entered: 01/09/2017)
01/12/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/12/2017. Court Reporter Roy Isbell. Trial will resume on 1/13/2017 at 9:00 a.m. (mab) (Entered: 01/12/2017)
01/13/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/13/2017. Court Reporter Roy Isbell. Trial will resume on 1/17/2017 at 9:00 a.m. (mab) (Entered: 01/13/2017)
01/17/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/17/2017. Court Reporter Roy Isbell. Trial will resume on 1/18/2017 at 9:00 a.m. (mab) (Entered: 01/17/2017)

Date	Dkt. No.	Docket Text
01/18/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/18/2017. Court Reporter Roy Isbell. (mab) (Entered: 01/25/2017)
01/19/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/19/2017. Court Reporter Roy Isbell & Melanie Wilkins. Trial will resume on 1/20/17 at 9:00 a.m. (mab) (Entered: 01/19/2017)
01/20/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/20/2017. Court Reporter Roy Isbell. Trial will resume on 1/23/2017 at 9:00 a.m. before the jury. <b>Counsel are to report at 8:30a.m. on 1/23/2017 to discuss issue raised on 1/20/2017.</b> (mab) (Entered: 01/20/2017)
01/23/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/23/2017. Court Reporter Roy Isbell. Trial will



<b>Date</b>	<b>Dkt. No.</b>	<b>Docket Text</b>
		resume on 1/24/17 at 9:00 a.m. (mab) (Entered: 01/23/2017)
01/24/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/24/2017. Court Reporter Roy Isbell. Trial will resume on 1/25/2017 at 9:00 a.m. (mab) (Entered: 01/24/2017)
01/25/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/25/2017. Court Reporter Roy Isbell. Trial will resume on 4/26/17 at 9:00 a.m. (mab) (Entered: 01/25/2017)
01/26/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/26/2017. Court Reporter Roy Isbell. Trial will resume on 1/27/2017 at 9:00 a.m. (mab) (Entered: 01/26/2017)
01/27/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/27/2017. Court Reporter Roy Isbell. Trial to

Date	Dkt. No.	Docket Text
		resume on 1/30/17 at 9:00 a.m. (mab) (Entered: 01/27/2017)
01/30/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/30/2017. Court Reporter Roy Isbell. Trial will resume on 1/31/17 at 9:00 a.m. (mab) (Entered: 01/30/2017)
01/31/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 1/31/2017 Court Reporter Roy Isbell. Trial will resume on 2/1/17 at 9:00 a.m. (mab) (Entered: 01/31/2017)
02/01/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/1/2017. Court Reporter Roy Isbell. Trial to resume on 2/2/17 at 9:00 a.m. (mab) (Entered: 02/01/2017)
02/02/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/2/2017. Court Reporter Roy Isbell. Trial will resume on Monday, February

<b>Date</b>	<b>Dkt. No.</b>	<b>Docket Text</b>
		6, 2017 at 9:00 a.m. (mab) (Entered: 02/02/2017)
02/06/2017	461	Proposed Jury Instructions by USA as to John Patrick Couch, Xiulu Ruan (Griffin, Deborah) (Entered: 02/06/2017)
02/06/2017	462	Proposed Jury Instructions by John Patrick Couch (Sharman, Jackson) (Entered: 02/06/2017)
02/06/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/6/2017. Court Reporter Roy Isbell. Trial will resume on 2/7/17 at 9:00 a.m. (mab) (Entered: 02/06/2017)
02/07/2017	468	ORAL ORDER entered by Senior Judge Callie V. S. Granade on 2/7/2017: 463 Motion for Judgment of Acquittal as to Xiulu Ruan DENIED for the reasons as set forth on the record. (mab) (Entered: 02/07/2017)
02/07/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/7/2017 Court Reporter Roy Isbell. Trial will resume on 2/8/17 at 9:00 a.m. (mab) (Entered: 02/07/2017)
02/08/2017		Minute Entry for proceedings held before Senior Judge Callie

Date	Dkt. No.	Docket Text
		V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/8/2017. Court Reporter Roy Isbell. Trial will resume on 2/9/17 at 9:00 a.m. (mab) (Entered: 02/08/2017)
02/09/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/9/2017. Court Reporter Roy Isbell. Trial will resume at 9:00 a.m. on 2/10/2017. (mab) (Entered: 02/09/2017)
02/10/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/10/2017. Court Reporter Roy Isbell. Trial will resume at 9:00 a.m. on 2/13/17. (mab) (Entered: 02/10/2017)
02/13/2017	481	Proposed Jury Instructions by USA as to John Patrick Couch, Xiulu Ruan (Griffin, Deborah) (Entered: 02/13/2017)
02/13/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/13/2017. Court Reporter Roy Isbell. Trial will

Date	Dkt. No.	Docket Text
		resume on 2/14/17 at 9:00 a.m. (mab) (Entered: 02/13/2017)
02/14/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/14/2017. Court Reporter Roy Isbell. Trial will resume on 2/15/17 at 9:00 a.m. (mab) (Entered: 02/14/2017)
02/15/2017	490	ORAL ORDER made Senior Judge Callie V. S. Granade on 2/15/2017: 488 Orally Renewed Rule 29 Motion for Judgment of Acquittal made at the close of all the evidence as to John Patrick Couch DENIED. 489 Orally Renewed Rule 29 Motion for Judgment of Acquittal made at the close of all the evidence as to Xiulu Ruan DENIED. (mab) (Entered: 02/15/2017)
02/15/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/15/2017. Court Reporter Roy Isbell. Trial will resume on 2/16/2017 before jury at 9:00 a.m. Counsel are to report at 8:30 a.m. on 2/16/2017. (mab) (Entered: 02/15/2017)
02/16/2017	491	NOTICE of Objection to Court's Jury Instructions by John Patrick

<b>Date</b>	<b>Dkt. No.</b>	<b>Docket Text</b>
		Couch (Sharman, Jackson) (Entered: 02/16/2017)
02/16/2017	492	MOTION to Adopt Motion of Other Defendant by Xiulu Ruan. (Knizley, Dennis) (Entered: 02/16/2017)
02/16/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/16/2017. Court Reporter Roy Isbell. Trial will resume on 2/17/17 at 9:00 a.m. (mab) (Entered: 02/16/2017)
02/17/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/17/2017. Court Reporter Roy Isbell. Deliberations to resume on 2/21/2017 at 9:00 a.m. (mab) (Entered: 02/17/2017)
02/21/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/21/2017. Court Reporter Roy Isbell. Deliberations will resume on 2/22/2017 at 9:00 a.m. (mab) (Entered: 02/21/2017)
02/21/2017	493	ENDORSED ORDER, GRANTING the Government's

Date	Dkt. No.	Docket Text
		oral 487 Motion to Strike unsolicited testimony of Xiulu Ruan; and finding as MOOT Defendant Xiulu Ruan's 492 Motion to Adopt Defendant Couch's Objection to Court's Jury Instruction (Doc. 491). Signed by Senior Judge Callie V. S. Granade on 2/21/2017. (mab) (Entered: 02/21/2017)
02/22/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan held on 2/22/2017. Court Reporter Roy Isbell. Deliberations will resume on 2/23/2017 at 9:00 a.m. (mab) (Entered: 02/22/2017)
02/23/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Jury Trial as to John Patrick Couch, Xiulu Ruan completed on 2/23/2017. Court Reporter Roy Isbell. (mab) (Entered: 02/23/2017)
02/24/2017	503	Order on Jury Trial entered: Guilty Verdicts: John Patrick Couch - Counts 1,2,3,4,5,6,7,13,14,15,16,17, & 19 of Second Superseding Indictment. Guilty Verdicts: Xiulu Ruan - Counts 1,2,3,4,8,9,11,12,15,16,17,19,20 ,21, & 22 of the Second

Date	Dkt. No.	Docket Text
		<p>Superseding Indictment. Not guilty verdict Count 10 as to Deft Ruan. Counts 10 and 18 DISMISSED with prejudice. Presentence Investigation Report as to Deft Couch due 4/20/2017. On or before 5/11/2017 the parties shall each file a Position with Respect to Sentencing Factors in accordance with Criminal Local Rule 32(B)(4) as to Deft Couch. Sentencing set for Defendant Couch on 5/25/2017 at 1:00 PM in US Courthouse, Courtroom 2B, 113 St. Joseph Street, Mobile, AL 36602 before Senior Judge Callie V. S. Granade. Presentence Investigation Report as to Deft Ruan due 4/21/2017. On or before 5/12/2017 the parties shall each file a Position with Respect to Sentencing Factors in accordance with Criminal Local Rule 32(B)(4) as to Deft Ruan. Sentencing set for Defendant Ruan on 5/26/2017 at 1:00 PM in US Courthouse, Courtroom 2B, 113 St. Joseph Street, Mobile, AL 36602 before Senior Judge Callie V. S. Granade. Government's motion for preliminary order off or feiture due 3/2/17. Post-trial motions due 3/27/17. Responses due 4/10/17. Replies due 4/17/17.</p>



Date	Dkt. No.	Docket Text
		Signed by Senior Judge Callie V. S. Granade on 2/24/2017. (Attachments: # 1 Verdicts Form Couch, # 2 Verdicts Form Ruan) (mab) Modified on 2/25/2017 (mab). (Entered: 02/24/2017)
03/02/2017	505	PRELIMINARY ORDER OF FORFEITURE as to Xiulu Ruan, it is hereby ORDERED, ADJUDGED, and DECREED the the property as set forth in Order is declared forfeited to the United States. Signed by Senior Judge Callie V. S. Granade on 3/2/2017. (15 certified copies forwarded to USA) (mab) (Entered: 03/03/2017)
05/22/2017	636	SENTENCING MEMORANDUM by Xiulu Ruan (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Knizley, Dennis) (Entered: 05/22/2017)
05/22/2017	638	MOTION to Adopt Defendant Couch's Sentencing Memorandum, by Xiulu Ruan. (Knizley, Dennis) Modified on 5/31/2017 (mab). (Entered: 05/22/2017)
05/24/2017	642	RESPONSE to filed by Plaintiff USA <i>Response to Defendants' sentencing memorandums and positions regarding sentencing</i>

Date	Dkt. No.	Docket Text
		<i>factors</i> (Griffin, Deborah) (Entered: 05/24/2017)
05/25/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Sentencing held on 5/25/2017 for John Patrick Couch, Imprisonment 240 months as to each of Counts 1,2,4,5,6,7,13,14 & 19; 60 months as to Counts 16 & 17; and 120 months as to each of Counts 3 & 15; all said terms are to be served concurrently. Recommendation to BOP: (1) substance abuse treatment, (2) mental health treatment, (3) housed as close to Mobile, AL as possible that meets the criteria of the prior recommendations. SRT 4 years; said terms consists of 3 years on each of Counts 1,2,4-7, 13-17 & 19; and 4 years on Count 3; all said terms are to run concurrently. Special conditions (1) substance abuse testing, (2) substance abuse treatment, (3) mental health treatment, (4) model search condition, (5) credit restrictions (6) financial information to Probation. Restitution\$16,844,569.03. SA \$1,300.00. Forfeiture to be made part of judgment. Court Reporter Roy Isbell. (mab) (Entered: 05/25/2017)

Date	Dkt. No.	Docket Text
05/25/2017	650	RESPONSE to filed by Defendant Xiulu Ruan <i>Defendant's Response to Governments Sentencing Memorandum</i> (Armstrong, Gordon) (Entered: 05/25/2017)
05/26/2017		Minute Entry for proceedings held before Senior Judge Callie V. S. Granade: Sentencing held on 5/26/2017 for Xiulu Ruan (2), Imprisonment 252 months, said terms consists of 240 months as to Counts 1,2,3,4,8,9,11,12 & 19; 120 months as to Counts 15, 20, 21, &22; and 60 months as to Counts 16 & 17; all said terms are to be served concurrently, except 12 months of the 120 term imposed as to Counts 15, 20, 21 & 22 is to be served consecutively to all the other concurrent terms. Recommendation to BOP - placement as close to Atlanta, GA, as possible. SRT 4 years; said terms consists of 3 years as to Counts 1,2,4,8,9,11,12,15, 16,17 & 19-22, and 4 years as to Count 3; all said terms are to run concurrently. Special conditions: (1) substance abuse testing, (2) substance abuse treatment, (3) mental health treatment, (4) model search condition, (5) credit restrictions

Date	Dkt. No.	Docket Text
		(6) financial information to Probation. Restitution \$15,239,369.93. SA \$1,500.00. Count10 Acquitted by Jury. Count 18 dismissed on motion of the Government. Forfeiture to be made part of judgment. Court Reporter Roy Isbell. (mab) (Entered: 05/26/2017)
05/31/2017	665	JUDGMENT as to Xiulu Ruan, Counts 1ss-4ss, 8ss, 9ss, 11ss, 12ss, 15ss, 16ss, 17ss,19ss-22ss - Imprisonment: 252 months, consisting of 240 months as to Counts1,2,3,4,8,9,11,12,19, 60 months as to Counts 16 & 17, 120 months as to Counts15,20,21,22, all said terms to be served concurrently, except 12 months of the 120 month concurrent terms imposed as to Counts 15,20,21, 22, are to be served consecutively to the other concurrent terms, w/recommendation to BOP that dft be imprisoned as close to Atlanta, GA, as possible; placement as close to Atlanta, GA, as possible. SRT: 4 years, consisting of 3 years on Counts 1,2,4,8,9,11,12,15,16,17,19-22, & 4 years as to Count 3,all such terms are to run concurrently, w/special conditions: (1) submit to substance abuse testing as

Date	Dkt. No.	Docket Text
		<p>set out, (2) participate in substance abuse treatment as set out, (3) participate in mental health evaluation &amp; treatment as set out, (4) submit to searches as set out, (5)prohibited from making financial transactions without approval of the Probation Officer as set out, (6) provide Probation Office access to financial information, &amp; (7) make restitution as set out; Restitution: \$15,239,369.93 to be paid as set out; SA: \$1,500.00.Count 10ss - Acquitted by Jury. Count 18ss - Dismissed on motion of the Government. Signed by Senior Judge Callie V. S. Granade on 5/31/2017. (tot) (Main Document 665replaced on 6/5/2017) (mab). (Entered: 06/01/2017)</p>
06/13/2017	677	<p>NOTICE OF APPEAL by XIULU RUANX Filing fee \$ 505. Filing fee paid – receipt number 46031043522. (Knizley, Dennis) (Entered: 06/13/2017)</p>
08/03/2017	703	<p>ORDER as to John Patrick Couch, as to Xiulu Ruan DENYING Dfts' 528 Motion for Judgment of Acquittal or, in the Alternative, Motion for</p>

Date	Dkt. No.	Docket Text
		New Trial as to Xiulu Ruan, 530 Motion for New Trial or, in the Alternative, Motion for New Trial as to John Patrick Couch as set out. Signed by Senior Judge Callie V. S. Granade on 8/3/2017. (tot) (Entered: 08/03/2017)
12/20/2017	723	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to John Patrick Couch for dates of 5/25/2017, SENTENCING OF JOHN PATRICK COUCH before Senior Judge Callie V. S. Granade, re: 717 Notice of Appeal - Final Judgment, 678 Notice of Appeal – Final Judgment, USCA Case Number 17-12653-D. Court Reporter Roy Isbell, CCR, RDR, CRR, Telephone number 251-690-3085. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE: The parties have twenty-one (21) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically

Date	Dkt. No.	Docket Text
		available to the public without redaction after 90 calendar days. Notice of Transcript Redaction to be filed by 1/10/2018. Redaction Request due 1/10/2018. Redacted Transcript Deadline set for 1/22/2018. Release of Transcript Restriction set for 3/20/2018. (Isbell, Roy) (Entered: 12/20/2017)
12/20/2017	724	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Xiulu Ruan for dates of 5/26/2017, SENTENCING OF XIULU RUAN before Senior Judge Callie V. S. Granade, re: 677 Notice of Appeal - Final Judgment, USCA Case Number 17-12653-D. Court Reporter Roy Isbell, CCR, RDR, CRR, Telephone number 251-690-3085. Transcript maybe viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE: The parties have twenty-one (21) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be

Date	Dkt. No.	Docket Text
		made remotely electronically available to the public without redaction after 90 calendar days. Notice of Transcript Redaction to be filed by 1/10/2018. Redaction Request due 1/10/2018. Redacted Transcript Deadline set for 1/22/2018. Release of Transcript Restriction set for 3/20/2018. (Isbell, Roy) (Entered: 12/20/2017)
05/11/2018	770	Final ORDER of Forfeiture as to the Vehicles entered as to John Patrick Couch and Xiulu Ruan. All right, title and interest in the Vehicles and/or proceeds of the sales of the Vehicles is condemned, forfeited and vested in the United States of America. The United States Marshals Service is authorized to dispose of the Vehicles and/or the proceeds of the sale in accordance with the law. The Court shall retain jurisdiction in this case for the purpose of enforcing this Order. Signed by Senior Judge Callie V. S. Granade on 05/11/2018. (mab) (Entered: 05/11/2018)
05/31/2018	775	NOTICE OF FILING OF OFFICIAL REDACTED TRANSCRIPT as to John Patrick Couch, Xiulu Ruan for



Date	Dkt. No.	Docket Text
		<p>           dates of 1/3/2017 Status            Hearing (no redactions);            1/5/2017 -2/23/2017 Jury Trial            before Senior Judge Callie V. S.            Granade, re: 333 Transcript,,,            717 Notice of Appeal - Final            Judgment, 722 Transcript -            Appeal,,,,,,,,, 724 Transcript -            Appeal,,, 678 Notice of Appeal            - Final Judgment, 723            Transcript - Appeal,,,            727Transcript - Appeal,,, 677            Notice of Appeal - Final            Judgment, USCA Case            Number 17-12653-D.            (Attachments: # 1 Supplement            Th 1/5/2017, # 2 Supplement F            1/6/2017 (no redactions), # 3            Supplement M 1/9/2017, # 4            Supplement Th 1/12/2017, # 5            Supplement F 1/13/2017, # 6            Supplement Tu 1/17/2017, # 7            Supplement W 1/18/2017, # 8            Supplement Th 1/19/2017, # 9            Supplement F 1/20/2017, # 10            Supplement M 1/23/2017,# 11            Supplement Tu 1/24/2017, # 12            Supplement W 1/25/2017 (no            redactions), # 13 Supplement            Th 1/26/2017 (no redactions), #            14 Supplement F 1/27/2017 (no            redactions,# 15 Supplement M            1/30/2017, # 16 Supplement Tu            1/31/2017, # 17 Supplement W            2/1/2017, # 18 Supplement Th            2/2/2017, # 19 Supplement M            2/6/2017, # 20 Supplement Tu         </p>

Date	Dkt. No.	Docket Text
		<p>2/7/2017, # 21 Supplement W  2/8/2017 (no redactions), # 22  Supplement Th 2/9/2017, # 23  Supplement F 2/10/2017, # 24  Supplement M 2/13/2017, # 25  Supplement Tu 2/14/2017, # 26  Supplement W 2/15/2017, # 27  Supplement Th 2/16/2017, #  28Supplement F 2/17/2017, #  29 Supplement Tu 2/21/2017, #  30 Supplement W 2/22/2017(no  redactions), # 31 Supplement  Th 2/23/2017, # 32 Supplement  - Master Index &amp; Certification)  (Isbell, Roy) Modified on  5/31/2018 (Isbell, Roy).  (Entered: 05/31/2018)</p>
08/22/2018	783	<p>FINAL ORDER OF  FORFEITURE AS TO ALL  ASSETS EXCEPT THE  FORFEITED VEHICLES as to  John Patrick Couch, Xiulu  Ruan. The Preliminary Orders  of Forfeiture as to Coach &amp;  Ruan are amended to account  for the interests of Whitney  Bank dba Hancock Bank,  Smart-Fill, &amp; JAX Leasing  LLC's interests. The right, title  &amp; interests in the assets listed  as set out is condemned,  forfeited &amp; vested in the United  States, &amp; the United States has  clear title to such assets &amp;/or  proceeds of the sale of such  assets as set out. The USM is</p>

Date	Dkt. No.	Docket Text
		authorized to dispose of the Subject Property as set out. The Court will retain jurisdiction in this case for the sole purpose of enforcing this Order. Signed by Senior Judge Callie V. S. Granade on 8/22/18. (tot) (Entered: 08/22/2018)
07/14/2021	917	AMENDED JUDGMENT as to Xiulu Ruan, Imprisonment: 252 months, consisting of 240 months as to Counts 1,2,3,4,8,9,11,12,19; 60 months as to Count 17; 120 months as to Counts 15,20,21,22; all said terms to be served concurrently, except 12 months of the 120 month concurrent terms imposed as to Counts 15,20,21, 22, are to be served consecutively to the other concurrent terms, w/ recommendation to BOP that dft be imprisoned as close to Atlanta, GA, as possible; placement as close to Atlanta, GA, as possible. SRT: 4 years, consisting of 3 years on Counts 1,2,4,8,9,11,12,15,17,19-22, & 4years as to Count 3, all such terms are to run concurrently, w/special conditions: (1)submit to substance abuse testing as set out, (2) participate in substance abuse treatment as set out, (3) participate in

Date	Dkt. No.	Docket Text
		<p>mental health evaluation &amp; treatment as set out, (4) submit to searches as set out, (5) prohibited from making financial transactions without approval of the Probation Officer as set out, (6) provide Probation Office access to financial information, &amp; (7) make restitution as set out; Restitution: \$15,239,369.93 to be paid as set out; SA: \$1,400.00. Count 10 - Acquitted by Jury. Count 18 dismissed on motion of the Government. <b>Count 16 vacated by the Eleventh Circuit Court of Appeals..</b> Signed by Senior Judge Callie V. S. Granade on 7/14/2021. (mab) (Entered: 07/19/2021)</p>
07/27/2021	918	<p>NOTICE OF APPEAL by Xiulu Ruan re: 917 Amended Judgment,,,,, Filing fee paid - receipt number 46031056582. (Knizley, Dennis) (Entered: 07/27/2021)</p>

**APPENDIX B****UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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No. 17-12653

UNITED STATES OF AMERICA,

*Plaintiff–Appellee,*

v.

XIULU RUAN, JOHN PATRICK COUCH,

*Defendants–Appellants.*

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**RELEVANT DOCKET ENTRIES**

<b>Date</b>	<b>Docket Text</b>
6/14/2017	CRIMINAL APPEAL DOCKETED. Notice of appeal filed by Appellant John Patrick Couch on 06/13/2017. Fee Status: Fee Paid. [Entered: 06/14/2017 10:14 AM]
05/25/2018	Appellant's brief filed by Xiulu Ruan. (ECF: Nicholas Lotito) [Entered: 05/25/2018 11:59 AM]
06/01/2018	Appendix filed [30 VOLUMES] by Appellant Xiulu Ruan. (ECF: L. Finlayson) [Entered: 06/01/2018 09:55 AM]
06/01/2018	Appendix filed [4 VOLUMES] by Appellant John Patrick Couch. (ECF:

Date	Docket Text
	Robert Sewell) [Entered: 06/01/2018 03:37 PM]
10/22/2018	Appellee's Brief filed by Appellee USA. [17-12653] (ECF: Sonja Ralston) [Entered: 10/22/2018 01:36 PM]
10/26/2018	Supplemental Appendix [1 VOLUMES] filed by Appellee USA. [17-12653] (ECF: Sonja Ralston) [Entered: 10/26/2018 08:20 AM]
02/04/2019	Reply Brief filed by Appellant Xiulu Ruan. [17-12653] (ECF: L. Finlayson) [Entered: 02/04/2019 03:37 PM]
02/04/2019	SUPPLEMENTAL Appendix filed [1 VOLUMES] by Appellant Xiulu Ruan. [17-12653] (ECF: L. Finlayson) [Entered: 02/04/2019 03:40 PM]
02/05/2019	SUPPLEMENTAL Appendix filed [1 VOLUMES] by Appellant John Patrick Couch. [17-12653] (ECF: Robert Sewell) [Entered: 02/05/2019 02:32 PM]
08/23/2019	Oral argument held. Oral Argument participants were Nicholas A. Lotito for Appellant Xiulu Ruan, Robert Jackson Sewell for Appellant John Patrick Couch and Sonja Ralston for Appellee USA. [Entered: 08/23/2019 12:38 PM]
07/10/2020	Opinion issued by court as to Appellants John Patrick Couch and Xiulu Ruan. Decision: Affirmed in part, Reversed in part, and Remanded.

Date	Docket Text
	Opinion type: Published. Opinion method: Signed. The opinion is also available through the Court's Opinions page at this link <a href="http://www.ca11.uscourts.gov/opinions">http://www.ca11.uscourts.gov/opinions</a> . (17-12654X) [Entered: 07/10/2020 09:11 AM]
07/10/2020	Judgment entered as to Appellants John Patrick Couch and Xiulu Ruan. (17-12654X) [Entered: 07/10/2020 09:15 AM]
09/25/2020	Petition for rehearing en banc (with panel rehearing) filed by Appellant Xiulu Ruan. [17-12653] (ECF: L.Finlayson) [Entered: 09/25/2020 11:21 AM]
11/04/2020	ORDER: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellant John Patrick Couch are DENIED, The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellant Xiulu Ruan are DENIED. [9229881-1] [Entered: 11/04/2020 11:52 AM]
11/12/2020	Mandate issued as to Appellants John Patrick Couch and Xiulu Ruan. [Entered: 11/12/2020 10:25 AM]

Date	Docket Text
04/05/2021	Notice of Writ of Certiorari filed as to Appellant Xiulu Ruan. SC# 20-1410. [Entered: 04/08/2021 02:59 PM]
11/10/2021	Writ of Certiorari filed as to Appellant Xiulu Ruan is GRANTED. SC# 20-1410. [Entered: 11/10/2021 02:54 PM]



**APPENDIX C****UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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No. 21-12521

UNITED STATES OF AMERICA,

*Plaintiff–Appellee,*

v.

XIULU RUAN, JOHN PATRICK COUCH,

*Defendants–Appellants.*

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**RELEVANT DOCKET ENTRIES**

<b>Date</b>	<b>Docket Text</b>
7/27/2021	CRIMINAL APPEAL DOCKETED. Notice of appeal filed by Appellant Xiulu Ruan on 07/27/2021. Fee Status: Fee Paid. [Entered: 07/28/2021 04:04 PM]
11/19/2021	ORDER: The joint motion to stay pending the United States Supreme Court's disposition of Case No. 20-1410, Xiulu Ruan v. United States, is GRANTED. Appellee's brief is due thirty (30) days from the Supreme Court's disposition of Ruan. [9529208-2] AJ (See attached order for complete text) [Entered: 11/19/2021 11:22 AM]

**APPENDIX D**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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No. 15-CR-00088

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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Filed: April 28, 2016

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**SECOND SUPERSEDING INDICTMENT**

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**THE GRAND JURY CHARGES:**

**I. INTRODUCTION**

At all times relevant to this Second Superseding Indictment:

**THE DEFENDANTS**

1. Defendant **JOHN PATRICK COUCH, M.D.** was a Mobile, Alabama physician with a medical degree from the Medical College of Georgia. He was licensed to practice medicine in the State of Alabama, and obtained a Drug Enforcement Administration (hereinafter “DEA”) Registration Number which allowed him to dispense Controlled Substances.

2. Defendant **XIULU RUAN, M.D.** was a Mobile, Alabama physician with a medical degree from

Shandong Medical University, located in Jinan, China. He was licensed to practice medicine in the State of Alabama, and obtained a DEA Registration Number which allowed him to dispense Controlled Substances.

#### **PAIN CLINIC AND PHARMACY**

3. Together, **COUCH** and **RUAN** owned and co-directed a pain management clinic named Physician's Pain Specialists of Alabama, P.C. (hereinafter "PPSA"). PPSA had two clinic locations in Mobile, Alabama — one located at 2001 Springhill Avenue, and the other located at 4682 Airport Boulevard. **COUCH** was listed as the registered agent for PPSA.

4. **COUCH** and **RUAN** also co-owned a pharmacy named C&R Pharmacy, which was located adjacent to the PPSA clinic on Airport Boulevard in Mobile, Alabama. **COUCH** was the registered agent for C&R Pharmacy.

#### **APPLICABLE FEDERAL LAW**

5. The Controlled Substances Act (hereinafter "CSA") governs the distribution and dispensing of various listed drugs, including narcotics, that are prescribed by physicians and other licensed health care providers. Licensed physicians and physician extenders may distribute and dispense Controlled Substances if they have a DEA Registration number and if they comply with all DEA regulations and all applicable federal laws.

6. The CSA assigns legal authority for the regulation of Controlled Substances to the DEA. The statute charges DEA with the prevention, detection, and investigation of the diversion of Controlled Substances from legitimate channels while at the

same time ensuring that adequate supplies are available to meet legitimate domestic medical, scientific and industrial needs.

7. The DEA issues registration numbers to qualifying persons, who are authorized to dispense Controlled Substances. To issue a prescription for a Controlled Substance, a physician must be licensed to practice by a state authority and must have a DEA registration number.

8. Under Title 21, United States Code, Section 802(21) the term practitioner is defined as a “physician . . . registered, or otherwise permitted by the United States or the jurisdiction in which the he practices . . . to distribute, dispense, . . . administer, . . . a Controlled Substance in the course of professional practice . . . ” Under Title 21, United States Code, Section 822(a)(2), every person or entity who handles Controlled Substances must be registered with DEA or be exempt by regulation from registration. The DEA registration grants practitioners federal authority to handle Controlled Substances. However, the DEA registered practitioner may only engage in those activities that are authorized under state law for the jurisdiction in which the practice is located.

9. The practitioner is responsible for the proper prescribing and dispensing of Controlled Substances prescribed under his or her name. The practitioner is responsible for ensuring that the prescription conforms to all requirements of the law and regulations, both federal and state. Controlled Substances may only be distributed or dispensed lawfully in the manner prescribed by the mechanism created by the CSA.

10. Provisions of the CSA mandate that the person or entity registered with DEA must be able to account for all Controlled Substances which have been received, distributed, dispensed, or disposed.

11. Title 21, Code of Federal Regulations, Sections 1306.05, 1306.11, and 1306.21 require a prescription for a Controlled Substance to be dated as of, and signed on, the day issued, bearing the patient's full name and address, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address, and DEA registration number of the prescriber.

#### CONTROLLED SUBSTANCES

12. Defendants **COUCH** and **RUAN** each obtained DEA Registration Numbers, which allowed them to dispense Controlled Substances. Between January 1, 2011 and May 20, 2015, **COUCH** and **RUAN** wrote approximately 285,000 prescriptions for Controlled Substances.

13. The CSA, Title 21, United States Code, Section 801, *et seq.*, and its implementing regulations set forth which drugs and other substances are defined by law as "Controlled Substances." Those Controlled Substances are then assigned to one of five schedules — Schedule I, II, III, IV, or V — depending on their potential for abuse, likelihood of physical or psychological dependency, accepted medical use, and accepted safety for use under medical supervision.

14. The term "Schedule I" means the drug has no currently-accepted medical use and lacks safety under medical supervision. Schedule I substances cannot legally be prescribed.

15. 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 substances may lead to severe psychological or physical dependence. Certain Schedule II drugs have a high potential for abuse. This abuse can lead to addiction, overdose, and sometimes death.

16. The term “Schedule III” means the drug or other substance has a high potential for abuse, but less than the drugs listed in Schedule II, the drug has a currently accepted medical use with severe restrictions, and abuse of the drug or other substances may lead to severe psychological or physical dependence.

17. The term “Schedule IV” means the drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III, the drug or other substance has a currently accepted medical use in treatment, and abuse may lead to limited (relative to the drugs or substances in Schedule III) physical or psychological dependence.

18. Title 21, Code of Federal Regulations, Section 1306.04(a) state that a valid prescription for a Controlled Substance must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. An Order purporting to be a prescription issued not in the usual course of professional practice, or in legitimate and authorized research, is not a prescription within the meaning and intent of Section 309 of the Act (21 U.S.C. § 829). The person knowingly issuing it shall be subject to the penalties provided for violations of

the provisions of law relating to Controlled Substances.

19. Certified Automation of Reports and Consolidated Orders System (hereinafter “ARCOS”) is an automated, comprehensive drug reporting system maintained by DEA, which monitors the flow of Controlled Substances from their point of manufacture through commercial distribution channels to point of sale or distribution at the dispensing/retail level. ARCOS accumulates these transactions, which are then summarized into reports. These DEA reports give investigators in Federal and state government agencies information that can then be used to identify the diversion of Controlled Substances into illicit channels of distribution.

20. **COUCH** and **RUAN** regularly prescribed large quantities of the following Controlled Substances at PPSA:

A. **Oxycodone:** The generic name for a highly addictive prescription analgesic. The use of oxycodone in any form can lead to physical and/or psychological dependence, and abuse of the drug may result in addiction. It is classified as a Schedule II Controlled Substance, and is sold generically or under a variety of brand names, including OxyContin, Roxicodone, Percocet, and Endocet.

B. **Oxymorphone:** The generic name for a highly addictive prescription analgesic. The use of oxymorphone in any form can lead to physical and/or psychological dependence, and abuse of this drug may result in addiction. It is classified as a Schedule II

Controlled Substance, and is sold generically or under a variety of brand names, including Opana.

C. **Hydrocodone:** The generic name for a highly addictive prescription analgesic. The use of hydrocodone in any form can lead to physical and/or psychological dependence, and abuse of this drug may result in addiction. As of October 6, 2014, hydrocodone is classified as a Schedule II Controlled Substance. Prior to this date, it was classified a Schedule III Controlled Substance. It is sold generically or under a variety of brand names, including Lortab, Norco, Zohydro, and Vicodin.

D. **Hydromorphone:** The generic name for a highly addictive prescription analgesic. The use of hydromorphone in any form can lead to physical and/or psychological dependence, and abuse of this drug may result in addiction. It is classified as a Schedule II Controlled Substance, and is sold generically or under a variety of brand names, including Exalgo and Dilaudid.

E. **Fentanyl:** The generic name for a highly addictive prescription analgesic. The use of fentanyl in any form can lead to physical and/or psychological dependence, and abuse of this drug may result in addiction. It is classified as a Schedule II Controlled Substance. It is sold generically or under a variety of brand names, including Subsys, Abstral, Lazanda, Fentora, and Duragesic.

F. **Morphine:** The generic name for a highly addictive prescription analgesic. The use of morphine in any form can lead to physical and/or psychological dependence, and abuse of this drug may result in addiction. It is classified as a Schedule II Controlled



Substance. It is sold generically or under a variety of brand names, including Avinza, MsContin, and Kadian.

**G. Benzodiazepines:** The generic name for an addictive class of psychoactive drugs that are used to treat a variety of medical issue, including depression, panic disorders, anxiety disorders, and insomnia, among others. The use of benzodiazepines can lead to physical and/or psychological dependence, and abuse of these drugs may result in addiction. The benzodiazepine class of drugs is classified as Schedule IV Controlled Substances. Common brand names of benzodiazepines include Xanax (generic: alprazolam); Valium (generic: diazepam), and Klonopin (generic: clonazepam), among many others.

**H. Carisoprodol:** The generic name for a centrally acting skeletal muscle relaxant. Carisoprodol is classified as a Schedule IV Controlled Substance. It is sold generically or under the brand name Soma.

21. Beginning in 2013, **RUAN** became not only one of the most prolific purchasers of Controlled Substances in the State of Alabama, but also in the entire United States. He regularly out-purchased doctors in much larger cities in the United States.

22. In the State of Alabama, **RUAN** was the number one purchaser of both oxycodone and morphine in 2011, 2012, 2013, 2014, and 2015. **RUAN** was also the top purchaser of fentanyl in the State of Alabama in 2012, 2013, and 2014.

23. The amount of Controlled Substances purchased by **RUAN** was not only extremely high as compared to other doctors within the State of

Alabama, but also as compared to doctors throughout the United States.

24. In 2013 and 2014, **RUAN** ranked amongst the top purchasers of oxycodone, morphine, hydrocodone, and fentanyl in the entire United States.

25. In 2015, **RUAN** only purchased controlled substances for five months before his arrest on May 20, 2015. However, even when compared to other doctors nationwide who purchased drugs over twelve months in 2015, **RUAN** was still nationally ranked in morphine, oxycodone, and fentanyl.

26. Many of the prescriptions issued by defendants **RUAN** and **COUCH** were not issued for a legitimate medical purpose and were not issued within the usual course of professional medical practice.

#### **PAIN MANAGEMENT**

27. The discipline of pain medicine is a recognized medical sub-specialty practiced by physicians in the United States. Legitimate pain medicine experts have specialized knowledge, education, training, and experience and utilize a multi-disciplinary approach.

28. Despite some aspects of legitimate medical practice at PPSA, **RUAN** and **COUCH** ran what was, in essence, a pill mill. Their primary method of pain management was writing multiple prescriptions for high doses of Schedule II, III, and IV Controlled Substances, including, but not limited to: oxycodone (brand names: OxyContin, Roxicodone, Percocet, and Endocet), oxymorphone (brand name: Opana), hydrocodone (brand names: Lortab, Norco, Zohydro,

and Vicodin) hydromorphone (brand names: Exalgo and Dilaudid), fentanyl (brand names: Subsys, Abstral, Lazanda, Fentora, and Duragesic), and morphine (brand names: MsContin, Avinza, and Kadian). Some of these prescriptions were diverted and/or abused by drug traffickers and addicts.

### **TIRF DRUGS**

29. Transmucosal instant-release fentanyl (“TIRF”) drugs are a subset of other fentanyl-based drugs. TIRF drugs are sold under several brand names, including Subsys, Abstral, Fentora, and Lazanda, all of which are Schedule II Controlled Substances.

30. The primary difference between these brands is how the fentanyl is delivered to the patient: Subsys is an oral spray; Abstral is a dissolvable tablet placed under the tongue; Fentora is a buccal tablet placed in the cheek; and Lazanda is a nasal spray.

31. The only FDA-approved indication for TIRF drugs is “for the management of breakthrough pain in patients with cancer who are already receiving, and who are tolerant to, around-the-clock opioid therapy for their persistent pain.”

32. Since fentanyl is approximately 100 times more potent than morphine, and 40–60 times more potent than 100% pure heroin, fentanyl in TIRF drugs is measured in micrograms.

33. Due to the extreme risk of misuse, abuse, addiction, and overdose death associated with TIRF drugs, the FDA requires that all practitioners, pharmacists, and patients must be enrolled in an FDA Risk Evaluation & Management Strategy (“REMS”) program before they are allowed to prescribe,

dispense, or take Subsys, Abstral, Fentora, or Lazanda.

34. Before prescribing a TIRF drug to a patient, the prescriber must fill out and sign a REMS form which explicitly states, “I understand that TIRF medicines are indicated only for the management of breakthrough pain in patients with cancer who are already receiving, and who are tolerant to, around-the-clock opioid therapy for their underlying persistent pain.”

35. TIRF drugs are exceptionally expensive. Insurance providers for PPSA patients who were prescribed TIRF drugs were billed anywhere from just under \$1,000.00 per month for a patient prescribed 30 doses of Subsys 100mcg, all the way up to over \$21,000.00 per month for a patient prescribed 240 doses of Subsys 1,200mcg.

36. Due to both the exceptional danger and expense of TIRF drugs, many insurance providers required prior approval before they reimbursed for a TIRF prescription.

37. Between January 2011 and May 20, 2015, **COUCH** and **RUAN** wrote over 6,000 prescriptions for TIRF drugs to approximately 1,000 different PPSA patients. Virtually all of these patients filled their expensive TIRF drug prescriptions at C&R Pharmacy, which was owned by **COUCH** and **RUAN**.

38. Of the approximately 1,000 different PPSA patients prescribed TIRF drugs by **RUAN** and **COUCH**, only a small percentage actually had cancer.

### **BILLING REQUIREMENTS**

39. A National Provider Identifier (“NPI”) is a unique billing number assigned to physicians, as well as to physician extenders, who have the capability of billing for patient services. The unique NPI under which a bill is submitted is a critical component used by healthcare insurance providers to determine whether a particular patient service will be reimbursed, and if so, for how much. Physicians are typically reimbursed at a higher rate than physician extenders.

40. Defendants **COUCH** and **RUAN** both had their own unique NPIs. They also employed physician extenders, such as physician’s assistants (“PA”), certified registered nurse practitioners (“CRNP”), and certified registered nurse anesthetists (“CRNA”) at PPSA. Some of the physician extenders at PPSA also had their own unique NPIs.

41. One of the insurance companies billed by PPSA, Blue Cross/Blue Shield of Alabama (“BC/BS”), required claims to be billed under the name and NPI of the physician or physician extender who actually rendered the service. The BC/BS billing guidelines stated,

“Under no circumstances should services performed solely by a [physician extender] be billed under a physician’s name and NPI. However, a physician may bill for these services under his/her name and NPI if the physician also sees and renders services to the patient, reviews the notes of the physician extender, and concur with the findings.”

42. These guidelines are in place, because BC/BS typically reimbursed at a higher rate for services provided by a physician, as opposed to the same services provided by a physician extender.

43. BC/BS, Cigna, United Healthcare, Tri-Care, and Medicare, among other insurance companies who provide healthcare coverage, are all “healthcare benefits programs” as that term is defined in Title 18, United States Code, Section 24(b).

#### UNDERCOVER ACTIVITY

44. Between August 2014 and January 2015, a DEA Task Force Officer (“TFO”) acted in an undercover capacity (hereinafter “UC”) as a “patient” seeking Controlled Substances. Specifically:

45. On or about August 5, 2014, the UC had an initial “patient” visit with **COUCH** at the PPSA Springhill location in Mobile, Alabama. During this initial visit, the UC told a co-conspirator employee that he had previously been self-medicating with oxycodone and Lortab he purchased on the street. Thereafter, during this same office visit, the UC saw **COUCH** for approximately 43 seconds and received a prescription for 90 tablets of Roxicodone 15mg, a Scheduled II Controlled Substance. The prescription was signed by **COUCH**.

46. On or about September 8, 2014, the UC, who was scheduled to have an appointment with **COUCH**, was seen instead by a co-conspirator employee at the Springhill PPSA location in Mobile, Alabama. This employee was not a medical doctor and was not authorized to prescribe or dispense Controlled Substances. During this visit, the UC was provided a prescription for 90 tablets of Roxicodone 15mg, a

Schedule II Controlled Substance. The prescription appeared to have been signed by **COUCH**. The UC did not see, nor was he treated by, **COUCH** during this visit.

47. On or about November 5, 2014, the UC, who was scheduled to have an appointment with **COUCH**, was seen instead by a co-conspirator employee at the Springhill PPSA location in Mobile, Alabama. This employee was not a medical doctor and was not authorized to prescribe or dispense Controlled Substances. During this visit, the UC's Roxicodone 15mg prescription, a Schedule II Controlled Substance, was increased to 110 tablets. This prescription was pre-dated and appeared to have been signed by **COUCH**. In addition, the UC received a second, post-dated prescription for the same drug and quantity. The UC did not see, nor was he treated by, **COUCH** during this visit.

48. On or about January 29, 2015, the UC, who was scheduled to have an appointment with **COUCH**, was seen instead by a co-conspirator employee at the Springhill PPSA location in Mobile, Alabama. This employee was not a medical doctor and was not authorized to prescribe or dispense Controlled Substances. During this visit, the UC received a prescription for 110 tablets of Roxicodone 15mg, a Schedule II Controlled Substance, prior to any physical examination being performed. The prescription appeared to have been signed by **COUCH**. The UC did not see, nor was he treated by, **COUCH** during this visit.

#### **THE PPSA ENTERPRISE**

49. The PPSA Enterprise, including its leadership, membership and associates, constituted

an enterprise, as defined by Title 18, United States Code, Section 1961(4) (hereinafter “the PPSA Enterprise”), that is, a group of individuals and legal entities associated in fact. The PPSA Enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the PPSA Enterprise. The PPSA Enterprise was engaged in, and its activities affected, interstate and foreign commerce.

50. Members and associates of the PPSA Enterprise primarily operated the enterprise as a pill mill where numbers of prescriptions for Controlled Substances were written for no legitimate medical purpose or outside the usual course of professional practice. In addition, members and associates of the PPSA Enterprise engaged in medical billing fraud and other criminal violations.

51. Members of the PPSA Enterprise, including the Defendants **COUCH** and **RUAN**, attempted to insulate themselves through the appearance of legitimate medical practice, which included the use of cursory physical exams, among other means and methods. Many of the prescriptions issued by the Defendants were illegal because they were not issued for a legitimate medical purpose, and not prescribed within the usual course of professional medical practice. The dispensing and distribution of Controlled Substances was undertaken primarily for a profit motive.

52. Members of the PPSA Enterprise also engaged in wide-ranging criminal conduct.



## I. CHARGES

### COUNT ONE

53. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

### THE PPSA ENTERPRISE

54. Beginning at least in or about 2011 and continuing through or about May 20, 2015, the exact dates being unknown, in the Southern District of Alabama and elsewhere, defendants **JOHN PATRICK COUCH, M.D.** and **XIULU RUAN, M.D.**; entities PPSA and C&R Pharmacy; and other individuals known and unknown to the Grand Jury, constituted an Enterprise within the meaning of Title 18, United States Code, Section 1961(4), that is, a group of individuals and entities associated in fact. The PPSA Enterprise constituted an ongoing organization, the members and associates of which functioned as a continuing unit for a common purpose of achieving the objectives of the PPSA Enterprise.

### PURPOSES OF THE ENTERPRISE

55. The purpose of the PPSA Enterprise included the following:

A. Providing the PPSA Enterprise and its leaders, members and associates with an expanding base of patients for narcotics distribution;

B. Generating, preserving and protecting the PPSA Enterprise's profits and patient base through acts of, among other things, unlawful drug distribution, healthcare fraud, and kickback violations;

C. Promoting and enhancing the PPSA Enterprise and its leaders, members and associates activities;

D. Enriching the leaders, members and associates of the PPSA Enterprise financially; and

E. Concealing and otherwise protecting the criminal activities of the PPSA Enterprise and its participants from detection and prosecution.

**MEANS AND METHODS OF THE ENTERPRISE**

56. The manner and methods of the PPSA Enterprise included, but were not limited to, the following:

57. Defendants **COUCH** and **RUAN** co-owned and co-managed PPSA and C&R Pharmacy. Defendants **COUCH** and **RUAN** were aware that individuals would travel from numerous states to Alabama in order to illegally obtain Controlled Substances. Defendants **COUCH** and **RUAN** were aware that individuals requested prescriptions for large quantities of Schedule II, III, and IV Controlled Substances. Defendants **COUCH** and **RUAN** operated the PPSA pain management clinics in order to generate criminal proceeds through the illegal distribution and dispensing of Controlled Substances by means of prescriptions or orders without a legitimate medical purpose and outside the usual course of professional practice. Defendants **COUCH** and **RUAN** conspired to insulate the PPSA Enterprise members from criminal prosecution by creating the appearance of a legitimate medical practice.

58. The Defendants **RUAN** and **COUCH** frequently prescribed Controlled Substances based on

their own financial interests, rather than the legitimate medical needs of the patient. For example, **RUAN** and **COUCH** began prescribing tens of thousands of doses of the Schedule II Controlled Substance Abstral, a TIRF drug only approved by the FDA for breakthrough cancer pain, to non-cancer patients after **RUAN** and **COUCH** each purchased approximately \$800,000.00 in stock of Galena Biophanna, Inc., the manufacturer of Abstral. In addition, **RUAN** and **COUCH** would switch patients' prescriptions to drugs, including the Schedule II Controlled Substance Subsys, they were paid to promote, even if the patients' medical needs were being met with their current prescription. Finally, at times, **RUAN** would determine a patient's prescription dose based on C&R Pharmacy's current inventory, as opposed to what a particular patient needed.

59. The Defendants **RUAN** and **COUCH** established a pharmacy, C&R Pharmacy, in order to illegally distribute and dispense Controlled Substances to the individuals receiving prescriptions from the clinics. Defendant **RUAN** also arranged for the dispensing of Controlled Substances directly from one PPSA clinic location to Workers Compensation patients in order to generate large criminal proceeds for himself and **COUCH**.

60. Other co-conspirators, to include but not limited to Justin Palmer, who is not named as a defendant herein, would sign Defendant **COUCH'S** name on prescriptions and other documents in order to expedite the unlawful prescribing and dispensing of Controlled Substances for the PPSA Enterprise.

61. The Defendants **RUAN** and **COUCH** would refrain from individualized and particularized

treatment plans for a number of patients in order to expedite the illegal dispensing of Controlled Substances. The Defendants understood that the majority of individuals seeking Controlled Substances would allege complaints of neck or back pain.

62. Defendant **RUAN** and co-conspirators would typically require that a patient provide a urine sample every 60 to 90 days during the patient's visit at PPSA. These point-of-care urine drug screens (herein after "UDS") would be conducted in order to make the clinic and PPSA's activities appear to be proper and to ensure that the prescription of Controlled Substances appeared to be legitimate.

63. **RUAN**, **COUCH** and co-conspirators did not routinely utilize the UDS analyses for their intended purpose, which was to determine whether a patient was taking the medications they had been prescribed and to ensure that the patients were not taking medications that they had not been prescribed. Rather, **RUAN** and **COUCH** used expensive gas chromatography-mass spectrometer (herein after "GC/MS") testing as a source of additional revenue for PPSA. These tests can be a legitimate part of the practice of pain management. However, **RUAN** and **COUCH** frequently ignored inconsistent GC/MS results, and continued prescribing large quantities of controlled substances to patients regardless of the GC/MS results.

64. In addition, patient services performed by PPSA's physician extenders were fraudulently billed to healthcare benefits programs under the NPI of **COUCH**. This "up-coding" was done because healthcare providers typically paid more in reimbursement for office visits or procedures handled

by the physician, as opposed to a physician extender, such as a nurse. The reimbursements for this “up-coding” of services resulted in PPSA and the doctors being paid more per visit by certain healthcare providers than they were entitled to be paid.

65. The Defendants **RUAN** and **COUCH** compensated some of the employee co-conspirators, to include but not limited to Justin Palmer and Bridgette Parker, neither of whom are named as defendants herein, based on the number of patients seen per day to induce the co-conspirators to see as many patients as possible each day, thereby, generating more money for the Enterprise.

66. The Defendants **RUAN** and **COUCH** and employee co-conspirators, to include but not limited to Justin Palmer and Bridgette Parker, neither of whom are named as defendants herein, would perform a cursory physical examination of the patients in order to insulate the co-conspirators, and in an attempt to justify the drugs being prescribed. The Defendants **RUAN** and **COUCH** and employee co-conspirators would examine individuals for the minimal amount of time possible in order to see the largest number of individuals each day and to generate the largest amount of criminal proceeds for the PPSA Enterprise.

67. **COUCH** and **RUAN** increased their profits by inducing Industrial Pharmacy Management (“IPM”), and later, Comprehensive RX Management (“CRM”), to pay them kickbacks in return for using their medical services, having threatened IPM & CRM with taking their business elsewhere. This inducement was accomplished by **RUAN** soliciting kickbacks for himself and **COUCH**. **RUAN** and **COUCH** increased their profits by receiving these kickbacks in exchange

for dispensing Controlled Substances provided by IPM, and later CRM, to workers' compensation patients. Some of the patients were insured through federal healthcare programs. The defendants **RUAN** and **COUCH** were paid an agreed upon monthly amount from IPM, and subsequently from CRM, for dispensing the Controlled Substances. These monthly checks to **RUAN** and **COUCH** were delivered to them in the Southern District of Alabama by an interstate commercial carrier. Defendant **RUAN** requested that monthly kickback checks be made payable to one of his companies and be mailed to his residence in Mobile, Alabama rather than to the PPSA clinics.

68. The defendant **RUAN** would verify, frequently by e-mail, with co-conspirator Christopher Manfuso, who worked for IPM and subsequently owned CRM, and who is not named as a defendant herein, which Controlled Substances resulted in higher reimbursables to PPSA and the defendants **RUAN** and **COUCH**. Based on those conversations between **RUAN** and Manfuso, **RUAN** requested and ordered those Controlled Substances to be delivered to PPSA's dispensary at the PPSA Springhill Avenue location in Mobile, Alabama.

69. Controlled Substances were delivered to the PPSA Springhill Avenue location in Mobile, Alabama, by a commercial interstate carrier, to include but not limited to FedEx, and the United States Postal Service. Thereafter, Defendants **RUAN** and **COUCH** and other members of the conspiracy, would dispense the Controlled Substances based on the false representation that the Controlled Substances, with higher reimbursables, were the medications

necessary to treat the Worker's Compensation patients.

70. The agreement between these parties was that **RUAN** and **COUCH** would receive a guaranteed monthly payment and an additional percent of the profits generated by dispensing in house medications, to include Scheduled II and III, Controlled Substances, which had been provided them by IPM, and later, by CRM, to patients.

71. The defendants **COUCH** and **RUAN** set up and maintained an online PPSA account with Blue Cross/Blue Shield ("BC/BS"), and other healthcare providers, so as to electronically submit medical claims and so as to be reimbursed electronically by BC/BS, and other healthcare providers.

72. Specifically, as part of said conspiracy, members of the conspiracy, both known and unknown to the Grand Jury, fraudulently procured electronic payment from healthcare providers, to which they were not entitled. The submission of bills to healthcare providers and the payment from the healthcare providers caused interstate wire transmissions, to include e-mails, and electronic wire transfers, to be sent to and from the state of Alabama to places outside the state of Alabama, to include the Southern District of Alabama. Members of the conspiracy would also use or cause to be used commercial interstate carriers and the United States Postal Service, and would use or cause to be used interstate wire communications, that is e-mails and telephone calls, to be used for other purposes in furtherance of said scheme and artifice to defraud.

**THE CONSPIRACY**

73. During at least in or about 2011 and continuing thereafter through at least in or about May 20, 2015, the exact dates being unknown, in the Southern District of Alabama, Southern Division, and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

being persons employed by and associated with the PPSA Enterprise, which PPSA Enterprise engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly, willfully and unlawfully combine, conspire, confederate, and agree, together and with each other, and with persons known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the PPSA Enterprise, through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, Sections 1961(1) and (5), consisting of:

**THE PATTERN OF RACKETEERING ACTIVITY**

74. The pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and 1961(5), through which the defendants and their co-conspirators agreed to conduct and participate in the conduct of the affairs of the PPSA Enterprise consisted of:

- A. Multiple offenses involving the felonious manufacturing, receiving, concealment, buying, selling or otherwise dealing in Controlled Substances, in violation of Title



21, United States Code, Sections 841(a)(1) and 846; and

- B. Multiple acts indictable under Title 18, United States Code, Section 1343 (Relating to Wire Fraud) and Title 18, United States Code, Section 1341 (Relating to Mail Fraud).

75. It was part of the conspiracy that each Defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the PPSA Enterprise.

76. All in violation of Title 18, United States Code, Section 1962(d).

#### **COUNT TWO**

77. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

78. Beginning during, or at least in, 2011, and continuing thereafter through May 20, 2015, in the Southern District of Alabama and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

conspired with each other and with others, both known and unknown to the Grand Jury, to knowingly and unlawfully distribute and dispense, possess with intent to distribute and dispense, and cause to be distributed and dispensed, Schedule II Controlled Substances, including, but not limited to: oxycodone (brand names: OxyContin, Roxicodone, Percocet, and Endocet), oxymorphone (brand name: Opana), hydromorphone (brand names: Exalgo and Dilaudid), and morphine (brand names: MsContin and Avinza),

by means of prescriptions, among other means and methods, outside the usual course of professional medical practice and not for a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

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

### **COUNT THREE**

80. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

81. Beginning during, or at least in, 2011, and continuing thereafter through May 20, 2015, in the Southern District of Alabama and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

conspired with each other and with others, both known and unknown to the Grand Jury, to knowingly and unlawfully distribute and dispense, possess with intent to distribute and dispense, and cause to be distributed and dispensed, a Scheduled II Controlled Substance, that is: a mixture and substance containing detectable amount of N–phenyl–N–[1–(2–phenylethyl)–4–piperidinyl] propanamide, which is commonly referred to as fentanyl (brand names: Subsys, Abstral, Fentora, Lazanda, Actiq, and Duragesic), outside the usual course of professional medical practice and not for a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

82. Because the conspiracy involved more than 40 grams of fentanyl, the penalty provisions of Title 21, United States Code, Section 841(b)(1)(B)(vi) apply.

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

**COUNT FOUR**

84. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

85. Beginning during, or at least in, 2011, and continuing thereafter through May 20, 2015, in the Southern District of Alabama and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

conspired with each other and with others, both known and unknown to the Grand Jury, to knowingly and unlawfully distribute and dispense, possess with intent to distribute and dispense, and cause to be distributed and dispensed, Schedule III Controlled Substances, including, but not limited to: hydrocodone, by means of prescriptions, among other means and methods, outside the usual course of professional medical practice and not for a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

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

**COUNTS FIVE THROUGH SEVEN**

87. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

88. On or about the date set forth below, in the Southern District of Alabama, Southern Division, the defendant,

**JOHN PATRICK COUCH, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully distribute and dispense a mixture and substance containing a detectable amount of oxycodone, to wit: Roxicodone 15mg, a Schedule II Controlled Substance, to an undercover DEA Task Force Officer for no legitimate medical purpose and outside the usual course of professional practice.

89. The allegations set forth in paragraphs 87–88 above, are hereby realleged and incorporated by reference for each of the following counts, as though fully set forth therein:

Count	Date	Patient	Controlled Substance	Number of Pills	Strength
FIVE	08/05/14	“UC Patient”	Roxicodone	90	15mg
SIX	09/08/14	“UC Patient”	Roxicodone	90	15mg
SEVEN	11/05/14	“UC Patient”	Roxicodone	110	15mg

90. In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2(a).

**COUNTS EIGHT THROUGH TEN**

91. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

92. On or about the date set forth below, in the Southern District of Alabama, Southern Division, the defendant,

**XIULU RUAN, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully distribute and dispense a mixture and substance containing a detectable amount a Schedule II Controlled Substance, to the patients identified below, for no legitimate medical purpose and outside the usual course of professional practice.

93. The allegations set forth in paragraphs 91–92 above, are hereby realleged and incorporated by reference for each of the following counts, as though fully set forth therein:

Count	Date	Patient	Controlled Substance	Number of Pills	Strength
EIGHT	2/26/2015	D.G.	Abstal	32	400 mcg
			Subsys	60	400 mcg
			Abstral	32	400 mcg
			Subsys	60	400 mcg
			Oxycontin	60	40 mg
			Norco	90	10 mg
NINE	4/27/2015	K.L.	Fentora	56	600 mcg
			Oxycontin	60	80 mg
			Oxycodone	120	15 mg
TEN	7/15/2014	E.G.	Fentora	112	600 mcg
			Zohydro ER	60	50 mg

94. In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2(a).

**COUNT ELEVEN**

95. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

96. On or about November 25, 2014, in the Southern District of Alabama, Southern Division, the defendant,

**XIULU RUAN, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully distribute the following Controlled Substance:

A mixture and substance containing a detectable amount of Oxymorphone, a Schedule II Controlled Substance, under the brand name Opana,

for no legitimate medical purpose, and outside the usual course of professional practice, to an individual identified herein as D.W.

97. In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

98. The use of the prescribed substance resulted in death and serious bodily injury to D.W., thus the penalty provisions set out in Title 21, United States Code, Section 841(b)(1)(C) apply.

**COUNT TWELVE**

99. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

100. On or about October 10, 2012, in the Southern District of Alabama, Southern Division the defendant,

**XIULU RUAN, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully distribute the following Controlled Substance:

(1) A mixture and substance containing a detectable amount of Morphine Sulfate, a Schedule II Controlled Substance, under the brand name MS-Contin,

for no legitimate medical purpose, and outside the usual course of professional practice, to an individual identified herein as J.B.

101. In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

102. The use of the prescribed substances resulted in death and serious bodily injury to J.B, thus the penalty provisions set out in Title 21, United States Code, Section 841(b)(1)(C) apply.

**COUNT THIRTEEN**

103. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

104. On or about March 5 and March 11, 2015, in the Southern District of Alabama, Southern Division, the defendant,

**JOHN PATRICK COUCH, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully distribute the following Controlled Substances:

- (1) A mixture and substance containing a detectable amount of Oxycodone Hydrochloride, a Schedule II Controlled Substance, under the brand name Roxicodone;
- (2) A mixture and substance containing a detectable amount of Oxycodone, a Schedule II Controlled Substance, under the brand name OxyContin,

for no legitimate medical purpose, and outside the usual course of professional practice, to an individual identified herein as K.D.

105. In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

106. The use of the prescribed substances resulted in death and serious bodily injury to K.D., thus the penalty provisions set out in Title 21, United States Code, Section 841(b)(1)(E)(i) apply.

**COUNT FOURTEEN**

107. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

108. On or about March 18 and 31, 2014, in the Southern District of Alabama, Southern Division, the defendant,



**JOHN PATRICK COUCH, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully distribute the following Controlled Substances:

- (1) A mixture and substance containing a detectable amount of Oxymorphone, a Schedule II Controlled Substance, and
- (2) A mixture and substance containing a detectable amount of Morphine Sulfate Instant Release, a Schedule II Controlled Substance.

for no legitimate medical purpose, and outside the usual course of professional practice, to an individual identified herein as P.C.

109. In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

110. The use of the prescribed substances resulted in death and serious bodily injury to P.C., thus the penalty provisions set out in Title 21, United States Code, Section 841(b)(1)(C) apply.

**COUNT FIFTEEN**

111. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

112. Beginning during, or at least in, 2011, and continuing through May 20, 2015, in the Southern District of Alabama, Southern Division, and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

did knowingly, willfully, and unlawfully combine, conspire, confederate, and agree with each other, and with others, both known and unknown to the Grand Jury, to commit certain offenses against the United States, to wit:

to knowingly and willfully execute, and attempt to execute a scheme and artifice to defraud a healthcare benefits program, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a healthcare benefits program in connection with the delivery of and payment for healthcare benefits, items, and services, in violation of Title 18, United States Code, Section 1347(a).

**OBJECTIVE OF THE CONSPIRACY**

113. The objective of the conspiracy was to unlawfully increase, through false and fraudulent manners, means, and pretenses, the reimbursements received by PPSA and C&R Pharmacy from private, state, and federal healthcare benefits programs.

**MANNER AND MEANS OF THE CONSPIRACY**

114. The manner and means used to achieve this objective included, but were not limited to, the following:

A. Billing patients' insurance providers for Controlled Substances that were not prescribed for a legitimate medical purpose or were prescribed outside the usual course of professional practice;

B. Submitting false, fraudulent, and materially misleading medical information to patients' insurance providers for the purpose of getting their insurance providers to pay for extremely dangerous and expensive TIRF drugs;

C. Running and then billing patients' insurance providers for various lab tests, including urine drug screens, for no legitimate medical purpose and outside the usual course of professional practice;

D. Falsely and fraudulently billing patients' insurance providers for office visits using a physician's national provider identifier number, when the physician did not see, treat, or render any service to the patient.

115. All in violation of Title 18, United States Code, Section 1349.

#### **COUNT SIXTEEN**

116. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

117. From in or about March 5, 2011, and continuing through in or about May 20, 2015, in the Southern District of Alabama, Southern Division, and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

did knowingly, willfully, and unlawfully combine, conspire, confederate, and agree together with each other, and with co-conspirators "M.D." and Christopher Manfuso, neither of whom are named defendants herein, and other persons, both known

and unknown to the Grand Jury, to commit certain offenses against the United States, to-wit:

to knowingly and willfully offer, pay, solicit, and receive any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, and in return for purchasing, leasing, ordering, and arranging for or recommending purchasing, leasing, and ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program. In violation of Title 42, United States Code, Section 1320a-7b(b).

#### **OBJECTIVE OF THE CONSPIRACY**

118. The objective of the conspiracy was for **RUAN** and **COUCH** to unlawfully receive illegal kickbacks as an inducement and in exchange for referrals of workers compensation patients.

#### **MANNER AND MEANS OF THE CONSPIRACY**

119. Industrial Pharmaceuticals Management ("IPM"), owned by co-conspirator M.D., was a California-based company that specialized in establishing and managing in-house dispensaries in medical clinics that treated workers compensation ("WC") patients. Once a contract was signed allowing IPM to manage the in-house dispensary, IPM supplied the dispensary with drugs and provided doctors with potential formularies. To induce and in exchange for doctors' in-house dispensing business,

there were times that IPM paid certain doctors large sums of money in the form of monthly “guarantees.”

120. In March 2011, **RUAN** and **COUCH** entered into contracts with IPM, whereby IPM agreed to manage a WC dispensary within PPSA. These contracts were signed by co-conspirator M.D. Christopher Manfuso was the regional manager who oversaw the IPM dispensary at PPSA.

121. To induce **RUAN** and **COUCH** to sign these contracts, IPM offered to pay **RUAN** and **COUCH** monthly guaranteed payments of \$45,000.00 and \$18,000.00, respectively. A second contract between IPM and **RUAN** increased his guarantee to \$53,000.00 per month. Once the contracts were signed, these guaranteed payments continued to be made each month in exchange for **RUAN** and **COUCH** referring their WC patients to the IPM dispensary within PPSA.

122. In December 2013, Manfuso left the employment of IPM and formed a new WC dispensary company called Comprehensive RX Management (“CRM”). When he formed CRM, Manfuso purchased some of IPM’s customer accounts, including the accounts of **RUAN** and **COUCH**. The kickback payments in exchange for WC patient referrals continued with **RUAN**’s payments increasing up to \$80,000.00 per month.

123. Between May 24, 2011 and January 21, 2015, IPM and later CRM paid \$864,770.41 to **COUCH** and \$1,765,132.46 to **RUAN** to induce, and in exchange for, **RUAN** and **COUCH** referring their WC patients to the IPM dispensary.

124. The kickback payments made by IPM, and later CRM, were not paid to PPSA. Rather, the monthly “guarantees” were paid to separate personal and business accounts controlled by **RUAN** and **COUCH**.

125. **RUAN** and **COUCH** received a combined \$2,629,902.87, in their personal capacity, as an inducement and in exchange for WC patient referrals.

#### **OVERT ACTS**

126. On or about September 20, 2012, **COUCH** received a check numbered 11667, payable to John Patrick Couch, M.D., from IPM, in the amount of \$38,543.70.

127. On or about February 25, 2013, **RUAN** received a check numbered 12649, payable to Ruan Companies, LLC, from IPM, in the amount of \$53,000.00.

128. On or about September 18, 2013, **COUCH** received a check numbered 13570, payable to Physicians Compounding Solutions, LLC, from IPM, in the amount of \$21,860.95.

129. On or about August 15, 2014, **COUCH** received a check number 1280, payable to Physicians Compounding Solutions, LLC, from CRM, in the amount of \$33,020.85.

130. On or about November 18, 2014, **RUAN** received a check numbered 1452, payable to Ruan Companies, LLC, from CRM, in the amount of \$80,000.00.

131. On or about January 21, 2015, **RUAN** received a check numbered 1555, payable to Ruan

Companies, LLC, from CRM, in the amount of \$75,000.00.

132. All in violation of Title 18, United States Code, Section 371.

**COUNT SEVENTEEN**

133. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

134. From in or about August 2012, and continuing through May 20, 2015, in the Southern District of Alabama, Southern Division, and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

did knowingly, willfully, and unlawfully combine, conspire, confederate, and agree with each other, with co-conspirator Natalie Perhacs, who is not named as a defendant herein, and with other persons, both known and unknown to the Grand Jury, to commit certain offenses against the United States to-wit:

to knowingly and willfully offer, pay, solicit, and receive any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, and in return for purchasing, leasing, ordering, and arranging for or recommending purchasing, leasing, and ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal

health care program. In violation of Title 42, United States Code, Section 1320a-7b(b).

**OBJECTIVE OF THE CONSPIRACY**

135. The objective of the conspiracy was the unlawful payment to and receipt of illegal kickbacks by **RUAN** and **COUCH** as an inducement and in exchange for their prescribing of the TIRF drug Subsys to patients at PPSA.

**MANNER AND MEANS OF THE CONSPIRACY**

136. In January 2012, the FDA approved a new TIRF drug under the brand name Subsys. Subsys was manufactured by Insys Therapeutics, Inc.

137. The only FDA-approved indication for Subsys was for the “management of breakthrough pain in adult cancer patients who are already receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent cancer pain.” Subsys is marketed in single-dose spray bottles in strengths of 100mcg, 200mcg, 400mcg, 600mcg, 800mcg, 1200mcg, and 1600mcg.

138. Due to both the extreme dangers and expense of Subsys, many healthcare providers required prior approval before they would reimburse for a patient’s Subsys other, with co-conspirator Natalie Perhacs, who is not named as a defendant herein, and with other persons, both known and unknown to the Grand Jury, to commit certain offenses against the United States to-wit:

to knowingly and willfully offer, pay, solicit, and receive any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind in return for



referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, and in return for purchasing, leasing, ordering, and arranging for or recommending purchasing, leasing, and ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program. In violation of Title 42, United States Code, Section 1320a-7b(b).

#### **OBJECTIVE OF THE CONSPIRACY**

135. The objective of the conspiracy was the unlawful payment to and receipt of illegal kickbacks by **RUAN** and **COUCH** as an inducement and in exchange for their prescribing of the TIRF drug Subsys to patients at PPSA.

#### **MANNER AND MEANS OF THE CONSPIRACY**

136. In January 2012, the FDA approved a new TIRF drug under the brand name Subsys. Subsys was manufactured by Insys Therapeutics, Inc.

137. The only FDA-approved indictment for Subsys was for the “management of breakthrough pain in adult cancer patients who are already receiving and who are tolerant to around-the-clock opioid therapy for their underlying persistent cancer pain.” Subsys is marketed in single-dose spray bottles in strengths of 100mcg, 200mcg, 400mcg, 600mcg, 800mcg, 1200mcg, and 1600mcg.

138. Due to both the extreme dangers and expense of Subsys, many healthcare providers required prior approval before they would reimburse for a patient’s Subsys prescription.

139. Starting in or about April 2012, and continuing up to May 20, 2015, **RUAN** and **COUCH** wrote thousands of prescriptions for Subsys, nearly all of which went to PPSA patients who did not have cancer.

140. A vast majority of these prescriptions for Subsys were filled at C&R Pharmacy, which was owned by **RUAN** and **COUCH**.

141. By early 2013, **RUAN** and **COUCH** had become two of the top ten largest volume prescribers of Subsys in the entire nation.

142. In April 2013, Insys Therapeutics hired Natalie Perhacs to be the Subsys drug representative for **RUAN** and **COUCH**. Perhacs's commissions were tied to the amount of Subsys **RUAN** and **COUCH** prescribed to their patients. During the 25-month period between April 2013 and May 2015, Insys Therapeutics paid Perhacs over \$700,000.00.

143. One of Perhacs's roles as the representative handling **RUAN** and **COUCH** was to set up speaker engagements during which **RUAN** and **COUCH** were to present information about Subsys to other potential prescribers of the drug. Perhacs attended these speaking engagements on behalf of Insys. However, on many occasions, the speaking engagements were only attended by, **RUAN** and **COUCH**, PPSA employees, and Insys employees.

144. Between August 2012 and May 2015, Insys paid **RUAN** and **COUCH** a combined total in excess of \$115,000.00. While this money was ostensibly paid for "speaking fees," it was actually paid to induce, and in exchange for, **RUAN** and **COUCH** prescribing high volumes of Subsys.

**OVERT ACTS**

145. On or about March 1, 2013, **RUAN** received check number 10479, payable to Xiulu Ruan, in the amount of \$2,400.00.

146. On or about May 9, 2013, **COUCH** received check number 11090, payable to John Patrick Couch, in the amount of \$3,200.00.

147. On or about February 13, 2014, **COUCH** received check number 1920, payable to John Patrick Couch 1099, in the amount of \$1,600.00.

148. On or about May 1, 2014, **RUAN** received check number 3057, payable to Xiulu Ruan XLR Properties, LLC., in the amount of \$6,000.00.

149. On or about October 31, 2014, **COUCH** received check number 5091, payable to John Patrick Couch 1099, in the amount of \$3,750.00.

150. On or about November 14, 2014, **RUAN** received check number 5390, payable to Xiulu Ruan XLR Properties, LLC., in the amount of \$3,750.00.

151. All in violation of Title 18, United States Code, Section 371.

**COUNT EIGHTEEN**

152. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

153. From in or about September 2014, and continuing through in or about February 2015, in the Southern District of Alabama, Southern Division, and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

did knowingly, willfully, and unlawfully combine, conspire, confederate, and agree with each other, and with other persons, both known and unknown to the Grand Jury, to commit certain offenses against the United States to-wit:

to knowingly and willfully solicit and receive any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, and in return for purchasing, leasing, ordering, and arranging for or recommending purchasing, leasing, and ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program. In violation of Title 42, United States Code, Section 1320a-7b(b).

**OBJECTIVE OF THE CONSPIRACY**

154. The objective of the conspiracy was the unlawful receipt of illegal kickbacks by **RUAN** and **COUCH**, through C&R Pharmacy, as an inducement and in exchange for their prescribing of the TIRF drug Abstral to patients at PPSA.

**MANNER AND MEANS OF THE CONSPIRACY**

155. In January 2011, the FDA approved a new TIRF drug under the brand name Abstral. During the time period alleged in this count, Abstral was manufactured by Galena Biopharma, Inc.

156. The only FDA-approved indication for Abstral was for the “management of breakthrough pain in cancer patients 18 years of age and older who are already receiving, and who are tolerant to, opioid therapy for their underlying persistent cancer pain.” Abstral was marketed as a dissolvable oral tablet in dosage strengths of 100mcg, 200mcg, 300mcg, 400mcg, 600mcg, and 800mcg.

157. Due to both the extreme dangers and expense of Abstral, many healthcare providers required prior approval before they would reimburse for a patient’s Abstral prescription.

158. **RUAN** and **COUCH** began prescribing Abstral in early 2011. However, they did this very sparingly until October 2013.

159. Beginning in the 4th quarter of 2013, **RUAN** and **COUCH** went from prescribing a few hundred micrograms of Abstral per month to prescribing millions of micrograms of Abstral per month. This meteoric rise in **RUAN** and **COUCH** prescribing Abstral coincided with each doctor purchasing approximately \$800,000.00 of stock in Abstral’s manufacturer, Galena Biopharma. After buying a combined total of approximately \$1,600,000.00 in Galena stock, **RUAN** and **COUCH** quickly became the Number One and Number Two prescribers, respectively, of Abstral in the entire United States.

160. Between the 4th quarter of 2013 through the 4th quarter of 2014, approximately 30% of all Abstral prescriptions written in the entire nation were written by **RUAN** and **COUCH**. **RUAN**, alone, accounted for approximately 1 out of every 5 Abstral prescriptions written during this time period. Nearly

all of the prescriptions **RUAN** and **COUCH** wrote for Abstral were written off-label for patients who did not have “underlying persistent cancer pain.”

161. Despite leading the nation in Abstral prescribing in 2014, **RUAN** and **COUCH** drastically cut back the number of prescriptions they wrote between April and September 2014. This dip from over 2,000,000 micrograms per month to less than 1,000,000 coincided with a dramatic drop in the price of Galena stock.

162. On or about October 1, 2014, after four straight months in which neither **RUAN** nor **COUCH** prescribed more than 1,000,000 micrograms of Abstral, Galena entered into a rebate agreement with C&R Pharmacy whereby, Galena would pay a scaled rebate based on the volume of Abstral purchased by C&R Pharmacy. C&R Pharmacy was owned by **RUAN** and **COUCH**, and almost exclusively filled prescriptions written by **RUAN** and **COUCH**.

163. Immediately after entering into the rebate agreement, **RUAN** and **COUCH** resumed prescribing large volumes of Abstral.

164. Thereafter, in February 2015, C&R Pharmacy received a payment of \$97,924.00 as a rebate based on the volume of Abstral purchased by the pharmacy.

#### **OVERT ACTS**

165. On or about October 1, 2014, C&R Pharmacy, which is jointly owned by **RUAN** and **COUCH**, entered into a rebate agreement with Galena Biopharma.

166. On or about February 18, 2015, Galena Biopharma executed a wire transfer in the amount of \$97,924.00 to the C&R Pharmacy bank account ending in x7003.

167. All in violation of Title 18, United States Code, Section 371.

**COUNT NINETEEN**

168. The Grand Jury incorporates number paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

169. From on or about January 1, 2011 through in or about May 20, 2015, in the Southern District of Alabama, Southern Division, and elsewhere, the defendants,

**JOHN PATRICK COUCH, M.D. and  
XIULU RUAN, M.D.,**

did conspire with one another and others, both known and unknown to the Grand Jury, including co-conspirators Natalie Perhacs, Justin Thomas Palmer, and Bridgette Parker, none of whom are named as defendants herein, to execute and attempt to execute a scheme and artifice to defraud, described below, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, to wit: (1) Wire Fraud in violation of Title 18, United States Code, Section 1343, and (2) Mail Fraud in violation of Title 18, United States Code, Section 1341.

**OBJECTIVE OF THE CONSPIRACY**

170. The objects of the conspiracy, among others, were to procure payments from healthcare providers to which PPSA and the defendants were not entitled

by false representations; and to procure payments for dispensing Controlled Substances to Workers Compensation patients, which Controlled Substances were selected because of the higher reimbursable to the defendants rather than for the needs of the patient.

**MANNER AND MEANS OF THE CONSPIRACY**

171. The defendants **COUCH** and **RUAN** set up and maintained an online PPSA account with Blue Cross/Blue Shield (“BC/BS”), and other healthcare providers, so as to electronically submit medical claims and so as to be reimbursed electronically by BC/BS, and other healthcare providers.

172. Members of the conspiracy, both known and unknown to the Grand Jury, fraudulently submitted claims for patient visits with **COUCH** or **RUAN**, which had, in fact, been patient visits with a PPSA Physician Extender, rather than a doctor. The reimbursements for this “up-coding” of services resulted in PPSA being paid approximately 30% more per doctor visit by BCBS, and other healthcare providers, than the payment to which PPSA and the doctors were entitled.

173. **RUAN** would verify by e-mail with co-conspirator Manfuso, who is not named as a defendant herein; who worked for IPM and subsequently owned CRM, and who did not live in the State of Alabama, which Controlled Substances resulted in higher reimbursables to PPSA and the defendants and, based on that fact, **RUAN** requested and ordered those Controlled Substances to be delivered to PPSA’s dispensary at the PPSA Springhill Avenue location in Mobile, Alabama.



174. Controlled Substances were delivered to the PPSA Springhill Avenue location in Mobile, Alabama, by a commercial interstate carrier, to include but not limited to FedEx, and the United States Postal Service. Thereafter, **RUAN** and **COUCH** and other members of the conspiracy, would dispense the Controlled Substances based on the false representation that the Controlled Substances, with higher reimbursables, were the medications necessary to treat the Worker's Compensation patient.

175. **RUAN** and **COUCH** were paid an agreed upon monthly amount from IPM, and subsequently from CRM, for dispensing the Controlled Substances. These monthly checks were delivered to **RUAN** and **COUCH** by an interstate commercial carrier.

176. In carrying out their scheme, members of the conspiracy would use or cause to be used commercial interstate carriers and the United States Postal Service, and would use or cause to be used interstate wire communications, that is e-mails and telephone calls, to be used for other purposes in furtherance of said scheme and artifice to defraud.

177. Specifically, as part of said conspiracy, members of the conspiracy, both known and unknown to the Grand Jury, fraudulently procured electronic payment from BCBS, and other healthcare providers, to which they were not entitled. The submission of bills to BCBS and the payment from BCBS caused wire transmissions, to include e-mails, and electronic wire transfers, to be sent to and from the state of Alabama to places outside the state of Alabama, to include the Southern District of Alabama.

178. Perhaps and others aided **RUAN** and **COUCH** in submitting false, fraudulent, and materially misleading documentation to patients' insurance providers in an effort to get reimbursed for the off-label prescribing of dangerous and expensive TIRF cancer drugs.

179. All in violation of Title 18, United States Code, Section 1349.

**COUNT TWENTY**

180. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

181. From on or about or about March 5, 2011, through in or about May 20, 2015, in the Southern District of Alabama, Southern Division, and elsewhere, the defendant,

**XIULU RUAN, M.D.,**

aided and abetted by Christopher Manfuso, who is not named as a defendant herein, and by others, both known and unknown to the Grand Jury, did knowingly conspire, confederate, and agree with other persons, both known and unknown to the Grand Jury, to commit an offense against the United States, in violation of Title 18, United States Code, Section 1957, to wit: to knowingly engage and attempt to engage, in monetary transactions by, through and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, that is, among other means and methods, transferring funds from bank accounts to other individuals by wire transfers, such property having been derived from a specified unlawful activity, that is, violations of and conspiracies to violate Title 18,

United States Code, Section 1349 (conspiracy to commit healthcare fraud), and Section 371 (conspiracy to violate the Anti-Kickback Statute); and Title 21, United States Code, Section 846 (conspiracy to distribute Controlled Substances).

182. In violation of Title 18, United States Code, Section 1956(h).

**COUNTS TWENTY-ONE AND TWENTY-TWO**

183. The Grand Jury incorporates numbered paragraphs 1–52 of this Second Superseding Indictment as if fully set forth herein.

184. On or about the dates set forth below, in the Southern District of Alabama, Southern Division, the defendant,

**XIULU RUAN, M.D.,**

aided and abetted by others, both known and unknown to the Grand Jury, knowingly engaged and attempted to engage in the following monetary transactions by, through and to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000; that is the deposit, withdrawal, transfer, and exchange of U.S. currency, funds, or monetary instruments, such property having been derived from a specified unlawful activity, namely violations of and conspiracies to violate Title 18, United States Code, Section 1349 (conspiracy to commit healthcare fraud), and 371 (conspiracy to violate the anti-kickback statutes); and Title 21, United States Code, Section 846 (conspiracy to distribute Controlled Substances).

185. With respect to Counts Twenty-One and Twenty-Two set forth below, **RUAN** caused funds to

be wired from the bank accounts identified below to the individuals and the accounts listed in the “Recipient” column.

Count	Date	Originating Financial Institution and Account	Recipient	Amount
TWENTY-ONE	08/14/2014	Wire transfer from State Bank & Trust Acct. ending 5553, in the name of XLR Exotic Autos LLC	JPMorgan Chase Bank, Acct. ending 9273, Dallas, Texas	\$124,355.87
TWENTY-TWO	09/26/2014	Wire transfer from State Bank & Trust Acct. ending 5553, in the name of XLR Exotic Autos LLC	Comerica Bank Acct. # ending 1629, San Diego, California	\$110,000.00

186. All in violation of Title 18, United States Code, Section 1957 and 2(a).

### **FORFEITURE NOTICES**

Pursuant to Rule 32.2(a), Fed. R. Crim. P., the allegations contained in Counts One through Twenty-Two of this Second Superseding Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length for the purpose of alleging forfeiture.

#### **RACKETEERING FORFEITURE (COUNT ONE)** **(RICO CONSPIRACY)**

The defendants, **JOHN PATRICK COUCH** and **XIULU RUAN**, are hereby notified that, upon conviction of the violation of Title 18, United States Code, Section 1962, as charged in Count One of this Second Superseding Indictment, the defendants shall forfeit, pursuant to Title 18, United States Code, Section 1963:

a) All interests acquired and maintained in violation of Title 18, United States Code, Section 1962;

b) All interests in, securities of, claims against, and property and contractual rights of any kind affording a source of influence over, the enterprise named and described herein which the defendant established, operated, controlled, conducted, and participated in the conduct of, in violation of Title 18, United States Code, Section 1962; and

c) All property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity in violation of Title 18, United States Code, Section 1962.

The property subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1), (a)(2)(A) – (D), (a)(3), and Title 21, United States Code, Section 853(a)(3), includes, but is not limited to, the following assets:

A. **XIULU RUAN's** Alabama Medical License, number MD25262;

B. **JOHN PATRICK COUCH's** Alabama Medical License, number MD20444;

C. **JOHN PATRICK COUCH's** Georgia Medical License, number 42552;

D. **JOHN PATRICK COUCH's** California Medical License, number 82209;

E. A sum of money in the amount of at least \$40,000,000.00 in United States currency, representing the total amount of proceeds obtained by the defendants, as a result of their violation of Title 18, United States Code, Section 1962;

F. The contents of the accounts and funds associated with PPSA and C&R Pharmacy as listed on Page 49.

G. The contents of the accounts associated with **RUAN** as listed on Page 49-50.

H. The contents of the accounts associated with **COUCH** as listed on Page 49-50.

I. The vehicles associated with **RUAN**, as listed on Page 50.

J. The vehicles associated with **COUCH**, as listed on Page 50.

K. The real property associated with **RUAN**, as listed on Page 51.

L. The real property associated with **COUCH**, as listed on Page 51.

All pursuant to Title 18, United States Code, Sections 1963(a)(1), (a)(2)(A)–(D), and (a)(3), and Title 21, United States Code, Section 853(a)(3).

**CONSPIRACY TO DISTRIBUTE AND DISPENSE  
FORFEITURE (COUNTS TWO THROUGH FOUR)  
AND DISTRIBUTION OF A CONTROLLED SUBSTANCE  
(COUNTS FIVE THROUGH FOURTEEN)**

The allegations contained in Counts Two through Fourteen of this Second Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 21, United States Code, Section 853(a)(1) and (a)(2).

Upon conviction of an offense as set forth in Counts Two through Fourteen of this Second Superseding Indictment, the defendants **JOHN PATRICK COUCH** and **XIULU RUAN** shall forfeit to

the United States of America, pursuant to Title 21, United States Code, Section 853(a)(1) and (a)(2), any property, real or personal, which constitutes or is derived from any proceeds the defendants **COUCH** and **RUAN**, obtained, directly or indirectly, as the result of such violation(s), and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation(s). The property to be forfeited includes, but is not limited to, the following:

A. **XIULU RUAN's** Alabama Medical License, number MD25262;

B. **JOHN PATRICK COUCH's** Alabama Medical License, number MD20444;

C. **JOHN PATRICK COUCH's** Georgia Medical License, number 42552;

D. **JOHN PATRICK COUCH's** California Medical License, number 82209;

E. A money judgment against **JOHN PATRICK COUCH** and **XIULU RUAN** representing a sum of money equal to the proceeds the defendants obtained, directly or indirectly, as a result of a violation of Title 21, U.S.C. § 846.

F. The contents of the accounts associated with PPSA and C&R Pharmacy, as listed on Page 49.

G. The contents of the accounts associated with **RUAN**, as listed on Page 49-50.

H. The contents of the accounts associated with **COUCH**, as listed on Page 49-50.

I. The vehicles associated with **RUAN**, as listed on Page 50.

J. The vehicles associated with **COUCH**, as listed on Page 50.

K. The real property associated with **RUAN**, as listed on Page 51.

L. The real property associated with **COUCH**, as listed on Page 51.

All pursuant to Title 21, United States Code, Sections 853(a)(1) and (a)(2).

**CONSPIRACY TO VIOLATE ANTI-KICKBACK  
STATUTE FORFEITURE  
(COUNTS SIXTEEN THROUGH EIGHTEEN)**

The allegations contained in Counts Sixteen through Eighteen are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

Upon conviction of the offense in violation of Title 18, United States Code, Section 371 set forth in Count Sixteen, Seventeen; or Eighteen, of this Second Superseding Indictment, the defendants, **JOHN PATRICK COUCH** and **XIULU RUAN** shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived, from proceeds traceable to a violation of an offense constituting specified unlawful activity, including an act or activity constituting an offense involving a Federal healthcare offense under Title 18, United States Code, Section 1956(c)(7)(F), or a conspiracy to commit such an offense. The propeliy to be forfeited includes, but is not limited to, the following:



A. A money judgment against **COUCH** and **RUAN** representing a sum of money equal to the proceeds the defendants obtained as a result of such, or proceeds traceable to such violation.

B. The contents of the accounts associated with PPSA and C&R Pharmacy, as listed on Page 49.

C. The contents of the accounts associated with **RUAN**, as listed on Page 49-50.

D. The contents of the accounts associated with **COUCH**, as listed on Page 49-50.

E. The vehicles associated with **RUAN**, as listed on Page 50.

F. The vehicles associated with **COUCH**, as listed on Page 50.

G. The real property associated with **RUAN**, as listed on Page 51.

H. The real property associated with **COUCH**, as listed on Page 51.

All pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

**CONSPIRACY TO COMMIT HEALTH CARE FRAUD  
FORFEITURE (COUNT FIFTEEN), AND CONSPIRACY TO  
COMMIT WIRE AND MAIL FRAUD FORFEITURE  
(COUNT NINETEEN)**

The allegations contained in Counts Fifteen and Nineteen of this Second Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture. Pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section

2461(c), if convicted of the offenses set forth in Count Fifteen or Count Nineteen, defendants **JOHN PATRICK COUCH** and **XIULU RUAN** shall forfeit property, real or personal, which constitutes or is derived from proceeds traceable to the offense, or a conspiracy to commit such offense. The property to be forfeited includes, but is not limited to, the following:

A. A money judgment against **JOHN PATRICK COUCH** and **XIULU RUAN** representing a sum of money equal to the proceeds the defendants obtained, directly or indirectly, as a result of a violation of Title 18, U.S.C. § 1349.

B. The contents of the accounts associated with PPSA and C&R Pharmacy, as listed on Page 49.

C. The contents of the accounts associated with **RUAN**, as listed on Page 49-50.

D. The contents of the accounts associated with **COUCH**, as listed on Page 49-50.

E. The vehicles associated with **XIULU RUAN**, as listed on Page 50.

F. The vehicles associated with **COUCH**, as listed on Page 50.

G. The real property associated with **RUAN**, as listed on Page 51.

H. The real property associated with **COUCH**, as listed on Page 51.

All pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

**CONSPIRACY TO COMMIT MONETARY TRANSACTIONS IN  
PROPERTY DERIVED FROM SPECIFIED UNLAWFUL  
ACTIVITY FORFEITURE (COUNT TWENTY); AND  
MONEY LAUNDERING FORFEITURE (COUNTS TWENTY-  
ONE AND TWENTY-TWO)**

Pursuant to Title 18, United States Code, Section 982(a)(1), if defendant **XIULU RUAN** is convicted of Count Twenty or Count Twenty-One or Twenty-Two, he shall forfeit to the United States all property, real or personal, involved in such offense(s) and all property traceable to such property.

The Property to be forfeited includes, but is not limited to, the following:

A. A money judgment against **RUAN**, representing a sum of money equal to all property, real or personal, involved in such offense(s), and all property traceable to such property.

B. The contents of the accounts associated with PPSA and C&R Pharmacy, as listed on Page 49.

C. The contents of the accounts associated with **RUAN**, as listed on Page 50.

D. The vehicles associated with **RUAN**, as listed on Page 51.

E. The real property associated with **RUAN**, as listed on Page 51.

All pursuant to Title 18, United States Code, Section 982(a)(1).

**SUBSTITUTE ASSETS**

If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants, **JOHN PATRICK COUCH** and **XIULU RUAN**,

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 1963(m), and Section 982(b)(1), Title 21, United States Code, Section 853(p), as incorporated by 28 U.S.C. § 2461, and Rule 32.2 Fed. R. Crim. P., to seek forfeiture of any other property of said defendants up to the value of the forfeitable property described above.

A TRUE BILL

/s/

FOREMAN UNITED STATES GRAND JURY  
SOUTHERN DISTRICT OF ALABAMA

KENYEN R. BROWN  
UNITED STATES ATTORNEY

By:

/s/ Deborah A. Griffin

DEBORAH A. GRIFFIN

Assistant United States Attorney

/s/ Christopher J. Bodnar  
CHRISTOPHER J. BODNAR  
Assistant United States Attorney

/s/ Vicki M. Davis  
VICKI M. DAVIS  
Assistant United States Attorney  
Chief, Criminal Division

APRIL 2016

**The accounts and funds associated with PPSA and C&R Pharmacy:**

1. Wells Fargo account ending in x6971, in the name of PPSA;
2. Wells Fargo account ending x1719, in the name of C&R, L.L.C.;
3. Wells Fargo account ending x7003, in the name of C&R Pharmacy, L.L.C.;
4. \$25,595.71 from JPMorganChase check ending 2682, payable to C&R Pharmacy; and
5. \$175,773.13 from Bank of America account ending 7563, payable to C&R Pharmacy.

**The bank and financial accounts associated with RUAN:**

1. State Bank & Trust (hereinafter "SB&T) account ending in x5553, in the name of XLR Exotic Autos, L.L.C.;
2. SB&T account ending in x5264, in the name of Ruan Companies, L.L.C.;
3. SB&T account ending in x6197 in the name of Xiulu Ruan;
4. Wells Fargo account ending in x1921, in the name of XLR Properties, L.L.C.;
5. Wells Fargo account ending in x72I2, in the name of Physicians Weight Loss and Wellness, L.L.C.;
6. Community Bank account ending in x9013, in the name of Xiulu Ruan;
7. Capital One Sharebuilder Investment Account ending in x6197-01 in Ruan's name;
8. Voya Financial 401K account plan ending in x7645 in Ruan's name;

9. College Counts 529 Fund, accounts ending in x3712
10. College Counts 529 fund, accounts ending in x3713.

**The contents of the following accounts associated with COUCH:**

1. Wells Fargo account ending in x0015, in Couch's name;
2. Wells Fargo account ending in x6997, in the name of Physician's Compounding Solutions, L.L.C.;
3. Wells Fargo Account ending in x9824, in Couch's name;
4. Wells Fargo account ending in x6989, in the name of JPC Properties, L.L.C.;
5. Trustmark account ending in x0135, in Couch's name;
6. & 7. E-Trade Investment accounts ending in x4755 and x8497;
8. Voya Financial 401K account plan # ending in x7645;
9. & 10. AllianzAnnuity accounts ending in x6369 and x5389;
- 11.-13. College Counts 529 Fund, accounts ending in x2423, x8641 and X2406, all owned by Couch.

**The following vehicles associated with RUAN:**

1. Aston Martin DB9 Volante, VIN #SCFAB02AX6GB04617;
2. Audi R8 Spyder VIN #VUATNAFG2BN002379
3. 2007 Bentley Continental GT, VIN #SCBDR33W47C048251;

4. 1987 BMW M6, VIN #WBAEE1400H2560721;
5. Ferrari F430 Convertible, VIN #ZFFEW59A070156841;
6. Ferrari 599 GTB, VIN #ZFFFC60A270150619;
7. 1994 Lamborghini Diablo, VIN #ZA9DU07P2RLA12227;
8. 2008 Lamborghini, VIN #ZHWBU47M78LA02880;
9. 2005 Mercedes SLR, VIN #WDDAJ76845M000070;
10. 2011 Mercedes Model SLS AMG, VIN #WDDRJ7HA2BA002474;
11. 2013 Mercedes SLS AMG GT, VIN #WDDRK7JA0DA010048;
12. Shelby Series 1, VIN #5CXSA1816XL000159;
13. Spyker C8 Laviolette VIN #XL98411G69Z363202;
14. 2005 Bently Armage (VIN #SCBLC43FX5CX10639);
15. 2005 Bentley Continental GT (VIN SCBCR63W65C024205);
16. 2006 Saleen S7 (VIN 1S9SB18126S000074);
17. 2007 Porsche 911 GT3 (VINWP0AC29997S792687);
18. 2005 Porsche 9TC (VIN WP0CB29965S675240)

**The following vehicles associated with COUCH:**

1. 2008 Cadillac Escalade, VIN 1GYFK66848R221963;
2. 2013 Maserati, VIN ZAM45VLA3D0072574;
3. 2015 Porsche 911, VIN #WP0BB2A96FS135380;
4. 2006 Porsche 911 Cabriolet (VIN WP0CB299X6S765878)



5. 1969 Chevrolet Corvette Sting Ray (VIN 194379S707748)

**The following real property associated with RUAN:**

1. 2800 Churchbell Ct. Mobile, Alabama;
2. 1323 Leroy Stevens Road, Mobile, Alabama, 36695 (Mobile County), (Parcel number R022707253000005.002), and which is more particularly described as:  
  
Lot 2 Byrum Family Division Map Book 129 Page 35.

**The following real property associated with COUCH:**

1. 319 Woodbridge Drive Daphne, Alabama;
2. Unit #7, 25040 Perdido Beach Blvd Orange Beach, Alabama;
3. Unit C-804 ,28105 Perdido Beach Blvd Orange Beach, Alabama.

**APPENDIX E**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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No. 15-CR-00088

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., ET AL.,

*Defendants.*

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FILED: FEB. 6, 2017

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**UNITED STATES' PROPOSED**  
**FINAL JURY INSTRUCTIONS**

Comes now the United States, by and through the United States Attorney for the Southern District of Alabama, and submits the following proposed final jury instructions.

\* \* \*

**Basic Instruction 9.1A**

**On or About; Knowingly; Willfully – Generally**

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the crime occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the time was committed on a date reasonably close to the date alleged.

The word “knowingly” means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

The word “willfully” means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that person acted “willfully,” the person need not be aware of the specific law or rule that his or her conduct may be violating.

\* \* \*

**Modified Eleventh Pattern Jury Instruction 100**  
**Controlled Substances Act Conspiracy**

In Counts Two, Three and, Four, the defendants Xiulu Ruan and John Patrick Couch are charged with conspiring to violate the Controlled Substances Act, in violation of Title 21, United States Code, Section 846.

Title 21, United States Code, Section 841(a)(1) makes it a crime for anyone to knowingly or intentionally distribute or dispense a Controlled Substance. However, federal regulations provide an exception for Controlled Substance prescriptions that are issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.

To qualify for this exception, a Defendant must have provided the prescription both for a legitimate medical purpose and while acting in the usual course of his profession. Without both, the Defendant is

subject to prosecution.<sup>7</sup> In other words, if the Government proves beyond a reasonable doubt that a prescription was written (1) not for a legitimate medical purpose, or (2) outside the usual course of professional practice, then the exception to the Controlled Substances Act does not apply.

As I previously explained to you, a “conspiracy” is an agreement by two or more persons to commit an unlawful act. In other words, it is a kind of partnership for criminal purposes. Every member of the conspiracy becomes the agent or partner of every other member.

The Government does not have to prove that all of the people named in the indictment were members of the plan, or that those who were members made any kind of formal agreement. The heart of the conspiracy is the making of the unlawful plan itself, so the Government does not have to prove that the conspirators succeeded in carrying out the plan.

The elements of the offense charged in Counts Two, Three, and Four are the same, but you must consider each count separately. The Defendant can be found guilty only if all of the following facts are proved beyond a reasonable doubt:

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<sup>7</sup> “[T]o qualify for the exception [set out in 21 C.F.R. § 1306.04], a defendant must have provided the prescription for both a legitimate medical purpose and while acting in the usual course of professional practice. Without both, the defendant is subject to prosecution.” *United States v. Dileo*, 625 F. App’x 464, 478 (11th Cir. 2015); *accord United States v. Joseph*, 709 F.3d 1082, 1094 (11th Cir. 2013).

- (1) Two or more people in some way agreed to try to accomplish a shared and unlawful plan to prescribe

**Count 2:** Schedule II Controlled Substances

**Count 3:** Fentanyl

**Count 4:** Schedule III Controlled Substances outside the usual course of professional purpose or not for a legitimate medical purpose; and

- (2) The Defendant knew the unlawful purpose of the plan and willfully joined in it.

As you heard during the course of trial, the Schedule II and III Controlled Substances alleged to have been prescribed either not for a legitimate medical purpose or outside the usual course of professional practice are sold under a variety of brand names, including:

Controlled Substance	Brand Names	Schedule
Fentanyl	Subsys Abstral Fentora Lazanda Duragesic	Schedule II
Oxymorphone	Opana	Schedule II
Hydromorphone	Exalgo Dilaudid	Schedule II
Oxycodone	OxyContin Roxicodone Percocet Endocet	Schedule II
Morphine	MSContin Kadian	Schedule II

	Embeda Avinza	
Hydrocodone	Lortab Norco Vicodin Zohydro	Schedule II /III*

*\*Hydrocodone was reclassified as a Schedule II Controlled Substance on October 6, 2014. Prior to that date, hydrocodone was classified as a Schedule III Controlled Substance.*

A person may be a conspirator even without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators.

If the Defendant played only a minor part in the plan, but had a general understanding of the unlawful purpose of the plan — and willfully joined in the plan on at least one occasion — that’s sufficient for you to find the Defendant guilty.

But simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests does not establish proof of a conspiracy. Also, a person who doesn’t know about a conspiracy, but happens to act in a way that advances some purpose of one, doesn’t automatically become a conspirator.

With regard to Count Three only, the Defendants are charged with prescribing more than 40 grams of fentanyl outside the usual course of professional practice and not for a legitimate medical purpose. You may find that one or more of the Defendants guilty of the crime even if the amount of the fentanyl for which he is being held responsible for is less than 40 grams. So if you find either Defendant guilty of Count Three,

you must also unanimously agree on whether the weight of the fentanyl exceeded 40 grams.

\* \* \*

**APPENDIX F**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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No. 15-CR-00088

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., ET AL.,

*Defendants.*

---

FILED: FEB. 6, 2017

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**DEFENDANTS' PROPOSED  
JURY INSTRUCTIONS**

Defendants John Patrick Couch, M.D., and Xiulu Ruan, M.D.,<sup>1</sup> respectfully request that, at the close of all evidence, the Court instruct the jury as outlined in Exhibit A.

\* \* \*

**Defendants' Requested Instruction Number 18**

For each count in the indictment involving the allegedly unlawful dispensing or distributing of Controlled Substances – whether the substantive violations of the Controlled Substances Act, conspiracies to violate the Controlled Substances Act, or as underlying offenses for other criminal acts, such

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<sup>1</sup> The parties have conferred, and Dr. Ruan joins in these requests.



as a conspiracy to violate RICO – I will now provide you with instructions on the terms “usual course of professional practice” and “legitimate medical purpose.”

In making a medical judgment concerning the right treatment for an individual patient, physicians have wide discretion to choose among a wide range of options. No single national standard exists. Therefore, in determining whether a Defendant acted without a legitimate medical purpose or outside the usual course of professional practice, you should examine all of a Defendant’s actions and the surrounding circumstances.

If a physician dispenses or distributes a Controlled Substance in good faith while medically treating a patient, then the physician has dispensed or distributed that Controlled Substance for a legitimate medical purpose and within the usual course of professional practice, and you must return a not guilty verdict for the applicable count. Good faith in this context means good intentions and the honest exercise of professional judgment as to the patient’s needs. It means that the Defendant acted in accordance with what he reasonably believed to be proper medical practice. If you find that a Defendant acted in good faith in dispensing or distributing a Controlled Substance, as charged in the indictment, then you must return a not guilty verdict.

The Government must prove, beyond a reasonable doubt, that the decision to dispense or distribute a Controlled Substance fell below a standard of medical practice generally recognized and accepted in the United States before you can return a guilty verdict as to that alleged violation of the

Controlled Substances Act. But a Defendant's negligence, failure to meet a standard of care, or medical malpractice, on its own, is not enough to convict him. An unintentional failure to act how a reasonable doctor would have acted under similar circumstances is, by itself, insufficient to prove that a Defendant dispensed or distributed a Controlled Substance outside the usual course of professional practice and for no legitimate medical purpose.

To prove a violation of the Controlled Substances Act in this case, the Government must prove, beyond a reasonable doubt, that the physician's decisions to distribute or dispense a Controlled Substance were inconsistent with any accepted method of treating a pain patient – that the physician, in fact, operated as a drug pusher.

Finally, simply because a prescription may have been signed (1) before a physician saw a patient or (2) without the physician actually seeing a patient does not mean that the prescription was outside the usual course of professional practice and for no legitimate medical purpose. Instead, your task is to determine whether the decision to distribute or dispense a Controlled Substance, based on a patient's unique medical conditions, was within the usual course of professional practice and for a legitimate medical purpose.

Source: United States v. Moore, 423 U.S. 122 (1975); United States v. Smith, 573 F.3d 639 (8th Cir. 2009); United States v. Merrill, 513 F.3d 1293 (11th Cir. 2008); United States v. Feingold, 454 F.3d 1001 (9th Cir. 2006); United States v. McIver, Case No. 8:04-CR-745, Doc. #27 (D.S.C. Apr. 18, 2005) (final

jury instructions), affirmed by United States  
v. McIver, 470 F.3d 550 (4th Cir. 2006).

\* \* \*

**APPENDIX G**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

---

CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

THURSDAY, JANUARY 12, 2017

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DAY 4 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[719] those drugs.

Q Now, if we will go to Government's Exhibit 13-2, the B..... medical file. And I believe you have that in front of you; is that right?

A Yes.

Q Did you also examine Mr. B's..... PDMP record?

A Yes, I did.

Q That was for the State of Alabama, Alabama PDMP?

A Yes.

Q And in connection with your review of the B..... case -- I failed to ask you one thing about Mr. Chausse. Was he 27 years old?

A Are you talking about the --

Q Mr. Chausse.

A Mr. Chausse? He was a young man, and I don't have his birth date here in front of me.

Q I show you the --

A I take that back. His date of birth, I see it here, is 2/17/59.

Q 1959. That was B..... Mr. Chausse, I'm sorry. Going back to him.

A Okay. I have Patrick Chausse in my hand and then there's B..... case.

Q No, I want Mr. Chausse's date. Was he 27? It says on his first report. On January 26, 2014 does it indicate his age?

[720] A 26 years old.

Q Now, on Mr. B's.... first page of treatment does it indicate his age?

A I believe it does but I'd have to read it.

Q Under his history?

A 50 years old.

Q Have you had the opportunity to review this file as well?

A Yes.

Q And my apologies for jumping back to the Chausse file.

Now on the B..... file, which is Government's Exhibit 13-2, what was Mr. B..... there for, what was his complaint?

A His immediate complaint appeared to be pain secondary to gout.

Q Did he also complain of some low-back pain?

A Yes.

Q And some knee pain?

A Yes, uh-huh.

Q What was going on with Mr. B..... in terms of medication at the time he first presented to PPSA?

A I believe that he was on some chronic pain medications that were controlled substances. I don't have it right here in front of me other than the fact that he was also using a agonist-antagonist drug known as Stadol, otherwise known as butorphanol.

Q Did he report for treatment to Dr. Ruan? Was Dr. Ruan the [721] physician?

A This page, I cannot tell you which --

Q Do you have that from your review?

A Pardon me?

Q The opinion you drafted?

A Yes.

Q That it's Dr. Ruan or do you know?

A I believe it was Dr. Ruan.

Q Okay. And did you determine that he also was taking some type of psychiatric medication?

A Yes, he was.

Q What was that?

A He was on antidepressant medication and on another medication that was for a mood stabilization, I believe.

Q And do you have your opinion before you, the draft summary and your concerns for the B..... treatment that you wrote?

A I'll have to dig for it but I've got it, yes.

Q Was Mr. B..... having some functioning problems also?

A Yes, he was.

Q And would you like to pull your report?

A Yeah, let me -- okay. I have my report now.

Q Did you determine who the provider or who the physician was treating Mr. B.....?

A Dr. Ruan.

Q And you've told us a little bit of why he was there. Could [722] you tell us if Mr. B..... would be considered a high-risk patient?

A Yes, he would be considered a high-risk patient.

Q Why is that?

A Due to psychiatric issues and also due to the fact that he had a significant amount of serious hypertension problems and also cardiac problems.

Q Was there -- when you say hypertension, are you talking about blood pressure?

A Blood pressure. High blood pressure yes.

Q In fact, at one patient visit his blood pressure was 199 over 101?

A Yes. That was an extremely high blood pressure and it went unaddressed at that visit.

Q By Dr. Ruan?

A Yes, by Dr. Ruan.

Q He was not referred to someone because of blood pressure in his treatment?

A Yeah, he should have probably gone to the emergency room.

Q Now, was there any effort to refer Mr. B..... for detoxification?

A None that I saw.

Q And can you tell us what treatment was provided by Dr. Ruan for this patient?

A Dr. Ruan chose to utilize a very unorthodox treatment for [723] this patient. This patient was suffering from various different types of problems to include chronic headaches, along with nausea, and along with -- with anxiety. And the problem in this particular case was this: Mr. B..... was for some reason given a special type of narcotic that can cause human beings to go into drug withdrawal.

Q What is that commonly referred to in the medical field, something that would cause you to go into withdrawal?



A Well, something that would cause you to go into withdrawal it could be more than one type of thing that causes it. But in this particular case Dr. Ruan -- pardon me, Dr. Ruan gave the patient a medication that on the package insert had a warning not to use this medication on people who were on regular narcotic drugs.

Q Would that be an opioid user?

A Yes, that would be an opioid user.

Q And when you say it was on the package insert, what do you mean?

A Inside the package in which medications are packed there's a piece of paper called a package insert and that package insert had specific warnings on it that stated that human beings who were to be given this medication needed to be completely detoxed off of the traditional opioid medication prior to being put on the medication that Dr. Ruan used in this particular case, which was a type of drug called an [724] agonist-antagonist drug.

Q What does that mean?

A It means that the drug has the potential to cause harm to the person who's taking it by putting them into severe opioid withdrawal. It's called precipitous withdrawal, and it's warned against in the package inserts that patients who are going to be put on this type of an antagonist drug, that they need to be fully detoxed.

Q Prior to taking it?

A Prior to taking the medication. Otherwise, they will go into precipitous withdrawal, which is -- which is very, very painful and excruciating.

Q Is that drug spelled B-U-T-O-R-P-H-A-N-O-L?

A Yes, butorphanol.

Q Does it also have any impact on the heart?

A Yes, it does. That particular medication increases the amount of work that the heart has to perform in order to pump blood. So it's a drug that is definitely not indicated in someone who has severe hypertension because hypertension, part of the problem is pumping that blood against a pressure gradient that's very high.

Q So that would be outside the usual course of professional practice?

A Yes, outside the usual course of professional practice and outside the usual course of prescribing of a controlled [725] substance.

Q Was the patient B..... opioid dependent at the time he came to Dr. Ruan?

A It --

Q Does it appear?

A Pardon me?

Q Does it appear from the file that he was?

A It appears that he might have been, yes. And I take that back, it appears that he was.

Q Was there any indication that there was any reference for treatment program to treat the opioid dependency or to treat his condition --

A No.

Q -- by Dr. Ruan? And what if anything was given to him in connection with sleeping?

A He was given sedative-hypnotic drugs. And those are types of drugs like benzodiazepines like Valium, phenobarbital would be an old-fashioned example of a sedative-hypnotic drug. And the problem with the prescribing, as I see it in this case, is that this patient should have been given the absolute minimum use of powerful sedative-hypnotic drugs and instead he got powerful sedative-hypnotic drugs which was --

Q In combination with opioids?

A In combination with opioids which increases the types of complications that can happen and other problems associated [726] with mixing drugs.

Q Now, is Xanax also one of these types of drugs?

A Yes.

Q A benzoid, benzo?

A Benzodiazepine.

Q We've not talked about benzos. Can you tell us the danger of benzos in combination with controlled substances, particularly opioids?

A Yeah. Well, benzos are controlled substances. Okay. And there is a danger in mixing them with opioids. The danger is fairly straightforward, and that is that when patients are prescribed powerful opioids and large doses of benzodiazepines that it increases the chances of them to have an accidental respiratory arrest.

Q And in connection with Mr. B....., he was given opioids, he was given the B-U-T-O-R-P-H-A-N-O-L?

A Butorphanol.

Q Butorphanol?

A Yeah.

Q And the controlled substance opioid; is that right?

A Yes; that's correct. And that was without the recommended detoxification period where the patient should have been withdrawn from the traditional narcotics prior to being put on the butorphanol agonist-antagonist drug.

Q In connection with Mr. B.....'s review of his file have [727] you determined if his treatment by Dr. Ruan was outside the usual course of professional practice?

A Most definitely it was outside the usual course of professional practice. The package insert is full of all types of warnings not to do what Dr. Ruan chose to do with this patient.

Q Now, I bring your attention to prescriptions written on or about October the 10th, 2012, by Dr. Ruan for morphine sulfate, a schedule II controlled substance, under the brand name MS Contin?

A Yes.

Q Was that prescription prescribed by Dr. Ruan for patient B..... outside the usual course of professional practice?

A Yes, I believe so.

Q And now if you will pull your report for Deborah Walker and I will bring you her file. The file is Government's Exhibit 13-3. Here you are.

Did you also have the opportunity to review Deborah Walker's file?

A Yes, I did.

Q If you will look at the beginning of your report and tell us what age was Deborah Walker when she came to see Dr. Ruan? Does it appear she was a 48-year-old female?

A Yes, she was a 48-year-old female. I was just looking for the exact birth date. I can't find it here.

[728] Q We're not trying to find the exact birth date. But she was a Dr. Ruan patient?

A Yes.

Q And can you tell us, had she previously been a patient in that practice some years earlier?

A Yes, she had previously been a patient of Dr. Ruan and it appears also Dr. Couch.

Q Was she not a patient for a period of 19 months when she was incarcerated?

A Yes, it appears that she was not a patient while she was incarcerated.

Q So this first visit on January 14th of 2014 was her first visit back after 19 months; is that correct?

A Correct.

Q According to the records?

A Yes.

Q Was there any inquiry about why she had been to prison by the doctors?

A No. And I think that's a big deficiency in this particular case.

Q Why is that?

A Well, because of the fact that unfortunately there are people who go to pain clinics and are drug seeking and also unfortunately there are people who do that and also commit other related criminal behaviors, and to have a patient in your [729] pain practice that you know has just done 20 months in prison is a red flag. It's a giant red flag.

Q We don't know why, but if we assume or if we -- give you a hypothetical that a particular patient had been in for drug diversion or for selling prescription drugs, would that be something the prescribing doctor would want to know?

A Absolutely.

Q Now, would that -- if it were a conviction for prescribing or -- excuse me -- for selling diversion drugs would that alter the treatment of the patient by the doctor?

A Yes, it would.

Q Why is that?

A Well, because of the fact the doctor would be warned, put on notice at that point that he had a patient who was going to be most likely to be involved in various illicit activities that involved drugs, either drugs that are illicit drugs or drugs that are diverted from a legitimate pain practitioner.

Q Now, we're not suggesting that that's the case of this individual that you reviewed. We do not know.

A Right.

Q Is that correct?

A Correct, yeah.

Q You were just giving a hypothetical about someone; is that right?

A It's a hypothetical but also Dr. Ruan should have asked [730] some questions of the patient. It's normal for doctors to ask their patients after they've gotten out of prison: Hey, how was prison; you know, what was it like? Did you have any illnesses or anything like that, were you there, et cetera, et cetera. And Dr. Ruan didn't get any information whatsoever from her, that I can glean.

Q Did you determine from the file that patient Walker reported her pain was alleviated by Lortab with some Neurontin and also by bending over?

A Yes, I did see that. And that was an interesting finding. Sometimes patients can relieve their own pain by stretching and by doing other types of exercises, and that includes positional movement and positional changes in their posture, they can actually make the pain get better sometimes.

Q Was there any documentation in the file as to which direction the patient had been to relieve the pain?

A No, that was not -- that was important information that should have been in the chart and it wasn't there.

Q Further, did the patient Walker report her pain interfered with her general activity, her walking ability and her normal routine?

A Yes. She basically complained that it interfered with most everything in her life.

Q Was she sent for any type of physical activity or physical treatment that you can find?

[731] A None that I could find, no. It would have been perfect for her.

Q Did you also determine from the file that the patient suffered from a bipolar disorder?

A Yes, she had a bipolar disorder and she also was diagnosed as having, in addition, the bipolar with some schizophrenic features.

Q Would this be a red flag as to whether a consultation should be appropriate with another physician?

A Oh, absolutely. She should have been referred to a psychiatrist and Dr. Ruan did not refer her to a psychiatrist.

Q Did Dr. Ruan note that she suffered from opioid dependence

A Yes, he did.

Q And she had complained that bending helped. Was she -- did she have an MRI of her spine?

A I believe she had an MRI and I believe that her MRI was close to normal.

Q Now, tell us, if you will, based on your experience and training, an MRI of someone in their 50th year of life, would that always be a perfect MRI?



A Absolutely not. Once people -- actually past about age 40 there gets to be degenerative changes within the spine and pelvis, and it's not -- the person is no longer going to make a virgin MRI.

Q So some things, minor things would be expected on an MRI of [732] someone in their 50s?

A Absolutely.

Q Does that cause everyone pain?

A No, it doesn't cause everyone pain.

Q And would you expect to treat everyone over 50 with some things on their MRI with an opioid?

A No, absolutely not.

Q Why is that?

A Because -- because if the patient is not having serious pain, then there's no reason for them to be given a powerful opioid.

Q Did you note that the patient Walker was started on Opana 10 milligrams immediate release by Dr. Ruan?

A Yes, I am aware of that.

Q And that is an oxymorphone, Opana?

A Oxymorphone is the chemical name of the drug and it is a very powerful opioid. As a matter of fact when I was in my training at the University of Arizona, the drug oxymorphone was taken off the market, I believe for about seven or eight years, because the authorities felt it was too addicting to be out and used by the general population.

Q Does Opana have a longer half-life than many other opioids used for chronic pain?

A It has a longer half-life than many of the opioids that are used for chronic pain difficulty.

[733] Q What does half-life mean?

A It means basically how much time it takes for half of that dose to be metabolized.

Q Into the body?

A Yes, into the body and out through the urinary system or through the feces.

Q And then, yes or no, does Opana have a more euphoric high than certain other opioids?

A Yeah, Opana, in my clinical practice, is the most sought after prescription drug by people who are heroin addicts or other I.V.-type abusers of I.V. opioid drugs. The -- the euphoria that Opana produces is not only longer acting than some of the other drugs like heroin but also is more intense and it is sold at a great premium on the black market.

MR. SHARMAN: Objection, Your Honor. Nonresponsive.

THE COURT: Overruled.

BY MS. GRIFFIN:

Q Dr. Greenberg, would Opana be a good choice by a pain management doctor for a person that had some psychiatric issues and opioid dependency?

A No. It would be a very poor choice.

Q And then did you determine that later the patient was prescribed carisoprodol?

A Yes.

Q And hydrocodone?

[734] A Yes.

Q What is carisoprodol?

THE COURT: Can you spell that for me?

MS. GRIFFIN: C-A-R-I-S-O-P-R-O-D-O-L.

THE COURT: Thank you.

BY MS. GRIFFIN:

Q What is carisoprodol?

A Carisoprodol is a sedative-hypnotic drug that is approved by the FDA for the short-term use -- it's an important distinction -- for the short-term use of acute spasm. Unfortunately carisoprodol also increases the euphoria that comes when people have used narcotic drugs and so it's a very popular drug that's used as an adjunct to give a person a more desirable high from their narcotic experience.

Q In fact, does carisoprodol have a brand name of Soma, S-O-M-A?

A Yes. Soma is the brand name.

Q Now, on January 14th of 2014, patient Walker was given a urine drug screen; is that correct?

A Yes.

Q At that time was Dr. Ruan prescribing the Soma and hydrocodone to the patient?

A Yes, I believe so.

Q Did she test positive for using those prescriptions?

A I believe not, no.

[735] Q Was there any counseling or any notation about her being warned that she was not testing positive for the drug she was being prescribed?

A No. And again, this patient was a high-risk patient because of -- because of her psychiatric issues and also because of her incarceration issues. And it was a -- it was a major -- a major mistake for the doctor not to sit down with this patient and just simply say: This is not acceptable. And not only that, but it could be quite dangerous.

Q You didn't notice any initialing on the lab report to show that Dr. Ruan had reviewed that lab report showing the inconsistencies?

A No, I didn't see that.

Q And would that be outside the usual course of professional practice, rather than just a mistake to inquire about the inconsistent drug test?

A Yes. To confront the patient in a humane, nonshameful way but let them know that you're very concerned about the fact that they didn't have the drugs that should have been in their system is an act of compassion and concern by a practitioner who cares about their patient. And when it doesn't happen, it really leaves a therapeutic hole.

Q Is it also a way to check for red flags what is signified when a patient is being prescribed a controlled substance and not testing positive for it?

[736] A Yeah, that's a red flag absolutely.

Q Why is that? What's it indicative of?

A It's indicative of the fact that they may be diverting the drug that they are being prescribed and

then using that medication, using the drug in an illicit fashion or selling it.

Q On that same day did the patient test positive for P-R-E-G-A-B-A-L-I-N? And you'll have to pronounce that for us.

A Pregabalin.

Q What is that?

A That is a medication that's used along with opiates sometimes in order to try to control pain.

Q Had that been prescribed by Dr. Ruan?

A Pardon me?

Q Had that been prescribed by Dr. Ruan?

A Yes, I believe so.

Q Did you determine that it wasn't prescribed by him in your report?

A Hang on just one second. Let me look at my report.

Q Your report of page four.

A Yes, page four. I see it. Was not prescribed by Dr. Ruan

Q That would be significant of what?

A That would be significant of the fact that the patient was noncompliant.

Q And that was receiving medication either off the street or from another doctor?

[737] A Yes, absolutely.

Q How would one have been able to tell that? What would you -- what would Dr. Ruan have been

able to check to determine if it was being prescribed by someone else?

A Well, the thing that should have been done on a regular basis, especially with high-risk patients such as Ms. Walker is that -- well, for example, in our practice --

Q No, just as to her.

A Just as to her?

Q Right. How could Dr. Ruan have determined if she had received that drug --

A Right. Okay.

Q -- from another doctor?

A By querying the PMP.

Q PHMP?

A Prescription monitoring program.

Q And would that be something Dr. Ruan should have discussed with patient Walker as well?

A Absolutely.

Q Further, were there any monitors for alcohol or alcohol metabolites of this patient?

A No, there weren't. And I believe I can safely say that both for Dr. Ruan and his partner, that they virtually never did any type of monitoring for alcohol or alcohol metabolites.

Q Why is that significant in pain management, why is that in [738] the usual course of professional practice?

A It's -- the reason that that is significant is that a lot of -- a lot of overdoses involve both alcohol and prescription drugs, or street drugs and so --

Q It's dangerous to combine those, is that what you're saying?

A It's very dangerous to combine those.

Q Did you also find thereafter on April 10th of 2014 another urine screen on patient Walker?

A Yes.

Q And again, was that urine screen, did it have inconsistent positives for unprescribed hydrocodone, hydromorphone, drugs not prescribed at that time by Dr. Ruan?

A Yes, it did. Again.

Q Was there any indication that anybody at that clinic sat down with her and told her she was violating any agreements and that they would not continue to treat her if she used drugs that they were not prescribing her?

A There's nothing to indicate that anybody took any type of corrective action to help this woman.

Q Is there anything that showed they had determined whether these were drugs she had gotten off the street or whether they were being prescribed by another doctor?

A I do not believe that any other further PMP check was done at this time that should have been done.

[739] Q Did you determine from her PDMP which you reviewed that in fact there were some other doctors prescribing her medication at the same time?

A Yes. There was approximately 12 or 13 other doctors prescribing for her. This is one of the reasons why, again in a state of the art and more ethical practice of chronic pain medicine, it is -- it is customary to go ahead and query the PDMP for every visit.

Q Is it inside the usual course of professional practice to check the PDMP of a noncompliant patient?

A Yes, absolutely.

Q Is it inside the usual course of professional practice to check the PDMP as to all patients in a pain management clinic?

A Yes, PDMP should be checked routinely and regularly. The PDMP is a -- is a life-saving intervention.

Q I'll direct your attention to the prescriptions written for patient Walker on November the 25th, 2014, by Dr. Ruan for oxymorphone which is under the brand name Opana, O-P-A-N-A. Was that script written on that date, based on your review of this file and her conditions, outside the usual course of professional practice?

A Yes, I believe so. They were outside the usual course of professional practice.

Q Did you conclude further that her treatment was outside the usual course of professional practice?



[740] A Very much so outside the course of usual practice.

Q I'll next show you the file for patient Gist, G-I-S-T, a male, Government's Exhibit 13-4?

A I have it.

Q And ask if you had the opportunity to review this file?

A Yes, I did.

Q Before we talk about Mr. Gist, I'll show you what's been admitted as Government's Exhibit 13-3A, prescriptions for Deborah Walker, that were previously admitted and ask if this is the Opana prescription you have referenced in November of '14 by Dr. Ruan for Ms. Walker?

A Yes, it appears to be.

Q And that's the one you have stated that was outside the usual course of professional practice?

A Yes.

Q And that would be along with all of her treatment?

A Yes.

Q Now, I'll go to patient Gist. You reviewed his file; is that correct?

A Yes, I did.

Q Could you tell us what Mr. Gist suffered from?

A Yes. Mr. Gist had a long-standing serious disorder with depression.

Q And why did he report to Dr. Ruan to be treated?

A I'm not sure why he chose to go to Dr. -- with Dr. Ruan.

[741] Q Was it determined early on that this patient was opioid dependent?

A Yes, this patient was opioid dependent.

Q Is there any concern by a pain management doctor about opioid drugs to individuals who also have some type of depressive disorder?

A Yes. It's a dangerous practice to prescribe powerful opioid drugs and/or sedative-hypnotic drugs to people who are suffering from serious, long-standing psychiatric disease such as this patient, Mr. Gist.

Q Early on was there a determination that this patient had inconsistent positives for nonprescribed fentanyl and clonazepam?

A Yes. On September 9th, 2014 the patient had multiple inconsistent positives for nonprescribed gabapentin, nonprescribed clonazepam -- that's a benzodiazepine sedative, it's not a drug -- nonprescribed fentanyl and nonprescribed norfentanyl. The other important --

Q Wait. Is one of those Xanax?

A Clonazepam is not Xanax, but it is close to Xanax. It's a benzodiazepine like Xanax is.

Q It's a benzo?

A Yes, it is.

Q And the fentanyl, of course, is a schedule II controlled substance?

[742] A Correct.

Q What is norfentanyl?

A Norfentanyl is a metabolite of fentanyl and it can be used to track whether or not a person has been using fentanyl because it's a metabolite that is part of the degradation of fentanyl itself.

Q It would mean in a urine test that one had been using fentanyl?

A Yes, it would mean that someone had been using fentanyl.

Q Now, was there also, in this particular test, a finding of alcohol in the urine in a reported level of 2.85 milligrams?

A Yes. And that's quite disturbing in this particular case because it went unaddressed by the doctors who were taking care of this patient.

Q That's a significant amount of alcohol; is that right?

A That's a very high level of alcohol and it could be extremely dangerous to a human being to have the combination of alcohol in their system and also opiates.

Q Was it outside the usual course of professional practice not to refer this patient to detox or to treatment?

A Yes, I believe it would have been outside of the usual course.

Q You've said he had inconsistent positives in September of '14. Did he also have inconsistent medications in December of '14, some three months later?

[743] A Yes. He did on the 21st of December he had inconsistent positives.

Q And was there any abdication of duty in connection with that second round of inconsistent positives?

A Yes. The doctor taking care of this patient had a duty to sit down with this patient and explain to him that his noncompliance was threatening his health in a very severe fashion and also he should have reinstated -- reiterated to the patient that the patient could no longer get any further -- he could no longer get any controlled substances at this point.

The ideal thing for the doctor to have done would have been to transfer the patient for detoxification at a licensed detoxification facility where he could be safely separated from the alcohol and drugs that he was abusing.

Q Was Mr. Gist ever tested again for alcohol?

A I don't believe so. And that was another huge mistake made in the management of this patient.

Q Did Dr. Ruan place Mr. Gist on high-dose fentanyl?

A I believe he did, yes.

Q Along with Opana?

A Yes.

Q And you've told us Opana is oxymorphone?

A Yes.

Q Did you find any documented valid informed consent with Mr. Gist as to either of those drugs, the fentanyl or the [744] Opana?

A I did not.

Q Did you draw a conclusion as to Mr. Gist's treatment by Dr. Ruan as to whether it was within the usual course of professional practice?

A My opinion is this is well below the usual course of professional practice in legitimate pain medicine.

Q Based on that conclusion, in connection with Mr. Gist did you determine that Dr. Ruan wrote him a prescription on July the 15th of 2014 for 112 tablets of Fentora, the 600 micrograms, and for Zohydro extended release 60 in number, 50 milligram?

A Yes. I felt that in my opinion was absolutely reckless prescribing and that those prescriptions were not legitimate.

Q They are outside the usual course of professional practice?

A Outside the usual course of professional practice and that the prescriptions themselves for those controlled substances were not legitimate, in my opinion.

Q Fentora is actually a fentanyl?

A Yes, it is; a fentanyl lozenge type of medication.

Q And next we will go to patient KL.....  
I'll show you Government's Exhibit 13-5, her patient

file, and ask is that the file that you have previously reviewed?

A Yes, I have. I'm trying to unstick the pages here.

THE COURT: Give us the exhibit number again for that [745] patient file.

MS. GRIFFIN: KL..... is 13-5.

THE COURT: Thank you.

A I have the file.

Q Did you determine that KL's..... initial visit with Dr. Ruan was January the 13th of 2009?

A Yes, I did.

Q And did she continue to see him through much of the time period alleged in these charts?

A Yes.

Q What was her initial complaint?

A Her initial complaint was severe pain over her entire body.

Q For how many years?

A 20 years.

Q What should this tell you as a pain physician?

A Cases such as this with total body pain for long-standing periods of time often indicate that the individual who's complaining about the total body pain for 20 years has unresolved psychiatric diagnoses and needs psychiatric help.

Q Now, you're not aware exactly what issues there might have been for this patient, but that would be the first thing you would question if someone advised you of that?

A Correct.

Q Did you determine that there was any appropriate functional-based chronic pain history from the patient or any [746] examination of the patient?

A No.

Q Or any questioning about what she had attempted to do to help the pain for the past 20 years?

A No. There was really no history of present illness taken or recorded, that I can see, regarding this patient.

Q Did you determine there were any referrals to a psychiatrist or any kind of physical therapy?

A No. I did not see any referrals to a psychiatrist or physical therapy. And I would say the Couch practice rarely referred people out for outside care.

Q Is that outside the usual course of professional practice for a pain clinic?

A Yes, I would say so. Absolutely.

Q Why is that?

A Because no one physician or no one group of physicians are masters at everything. And the fact of the matter is that when people present with complex long-standing problems that are not easily solved, that referral to the appropriate specialists, whether

it's a psychiatrist or neurologist, or whatever, is an appropriate thing to do and a good thing to do.

Q Did you find any indication in the file that this patient L... had cancer?

A I believe -- I believe she had no cancer but despite the fact that she had no cancer whatsoever, at least nothing that I [747] saw, that she was given an end-of-life drug that is only approved by the FDA for people who are in the last stages of their lives with cancer.

Q Would that be the fentanyl lozenges that she was prescribed?

A Right.

Q Was she also prescribed Opana, OxyContin, Xanax, Percocet, Lunesta sleeping pills and Soma?

A Yes.

Q By Dr. Ruan?

A Yes, she was.

Q Those are all schedule II narcotics in addition to the fentanyl being a schedule II?

A I believe the benzo set of hypnotic drugs were not schedule II. They were probably schedule III or IV.

Q And that would be the Xanax?

A Right. The benzodiazepine, yes.

Q It's a schedule drug, not a schedule II?

A Right.

Q Now schedule II is the highest schedule a physician can write; is that correct?



A It's the highest legal schedule the physician can write without special permission for scientific purposes that are to be granted by the federal government.

Q Did you see any reporting of a appropriate comprehensive [748] informed consent for this combination of serious drugs?

A No appropriate informed consent for this combination of drugs. It's a major criticism of the care for this patient.

Q Was there any warning that there were dangers with mixing the powerful opioids with her prescribed sleeping pills and other sedative medications?

A Not that I saw on the chart.

Q Is that outside the usual course of professional practice?

A Yes, it was outside the course of usual professional practice.

Q Did you determine that this patient was noncompliant when she claimed to have run out of medications prematurely on multiple occasions?

A Yes, she -- she definitely was noncompliant. She definitely ran out of her medications prematurely on multiple occasions and unfortunately neither Dr. Ruan or Dr. Couch took her to task and gave her the counseling that she needed to let her know what kind of danger that she could be getting into.

Q Is that a red flag for pain doctors if a patient continually claims to run out of medications prematurely?

A Yeah, that's a giant red flag.

Q What does that signal?

A It signals -- first of all, it means that the patient is probably either taking too much of the medication that's been prescribed for her at a time or that she may be diverting those [749] medications. And we can't tell which.

Q Either way, would it be inside the usual course of professional practice to have counseled her and to determine what the issue was?

A Yeah.

Q And that wasn't done, was it?

A Was not done. No history was taken, no intervention happened, and the patient was not put on what should have been a more stringent regimen of urine testing, and certainly she should have been getting the PDMP every time she came in to see the doctors.

Q They should be checking to see if she was receiving medication from anyone else?

A Right, exactly; to make sure that she wasn't adding other illicit medications into her regimen.

Q On October of 2014 did this patient have some illicit inconsistent positives in her urine drug test for hydrocodone and fentanyl?

A Yes.

Q And at that time she was not receiving either of those from Dr. Ruan; is that correct?

A That is correct.

Q Was there any indication that this red flag was discussed with her or there was a determination as to how she had received these other drugs?

[750] A No. It appears just that Dr. Ruan and Dr. Couch ignored this red flag.

Q Now, this was Dr. Ruan's patient; right?

A Right. Correct.

Q In reviewing this file is it your professional opinion that prescribing and treatment of this patient was outside the usual course of professional practice?

A Yes, I believe that prescribing and the treatment was outside the course of usual professional practice.

Q I direct your attention to a script written by Dr. Ruan for this patient on April the 27th of 2015 for Fentora 600 micrograms, for OxyContin 80 milligrams, for oxycodone 15 milligrams. Those being 56 Fentora, 60 OxyContin and 120 oxycodone. Is it your position, from reviewing this file, that those prescriptions were outside the usual course of professional practice?

A Absolutely. In my opinion they were outside the usual course of professional practice.

Q We will now go to the G..... file -- that is Government's Exhibit 13-6 -- and ask if you have had occasion to review this file and form an opinion.

A Yes, I have.

Q What is your opinion after reviewing this file as to whether the treatment of this patient by Dr. Ruan was outside the usual course of professional practice?

[751] A After reviewing this file carefully, I most definitely believe that the care given to patient G..... and the prescriptions given to her were outside the usual course of -- chronic pain medication and chronic pain practice.

Q Now, this was a Dr. Ruan patient?

A Yes.

Q Dr. Ruan prescribed her a Narcan injector for PRN use in overdose situations. First of all, what does PRN mean?

A PRN stands for as the occasion arises. That's a Latin abbreviation. So it means that as needed the patient should use this medication.

Q What is a Narcan injector?

A A Narcan injector has an antidote for opioid narcotics in it that will -- that will block the effect temporarily for a very short term of time as far as -- as far as trying to prevent an overdose. But this is --

Q Wait just a minute. Narcan is N-A-R-C-A-N?

A Yes, N-A-R-C-A-N.

Q And you said it's used to stop an overdose; is that correct?

A That's the -- that's the purported idea for some chronic pain physicians to do. But it doesn't make sense and here's why. Okay. First of all, these patients have usually multiple drugs in their system, not just narcotics in their system. Okay. And the Narcan injectors, they may blunt the [752] effect of the narcotics that are in that person's system, but they in no way take care of the sedative-hypnotic effects and respiratory depression effects of the benzodiazepines

and other types of medications that they are taking. So it gives individuals -- certain practitioners, it gives them a false degree of confidence.

But in reality these injectors, at least by the national studies that I've looked at and also international studies that I've looked at, don't really cause that much protection. One of the huge problems with this is that patient G..... is walking around in a stuporous state, and even if she were to be conscious enough to know that there was a problem, there's been no one trained by Dr. Ruan or by Dr. Couch to go ahead and teach this person, at least no documentation, to teach this person or the people who are around them how to use this type of an injector as an antidote.

So because of that, it's a bad idea. It's something that doesn't make sense from a rational standpoint. And the other question that -- the other issue that comes up with this is who's going to be watching the patient? Patient G..... is in a stupor and ready to fall into a coma. Who's watching her?

Q So is what you're saying that she may not realize at the point that she needs to give herself that injection?

A That's right. She may not realize it because of the fact [753] that the patient has already, what they call obtunded. Obtunded means they are under heavy influence of the drugs that she's taking.

Q And you used the word "narcotics," that it could help reverse the overdose narcotics. Are you referring to opioids?

A Yes, referring to opioids.

Q Is narcotics an older term used?

A Yes.

Q For opioids?

A An older term, yes.

Q And do you believe that that was outside the usual course of professional practice to prescribe her a Narcan injector?

A Especially when she did not -- she and her family members did not get any type of training on how to do CPR and on how to clear an airway and how to do all the emergency maneuvers that need to be done when somebody has a respiratory arrest.

Q And there was no detailed comprehensive informed consent which you located in the file about these issues?

A And there was no -- there was no detailed information that I saw in the chart on how the patient was supposed to use this Narcan.

Q Rather than giving a patient Narcan that they might not realize when they need to use it, should a doctor advise them of the dangers of using their scripts or their medications inappropriately?

[754] A Yeah, absolutely. Absolutely. The patient in this type of a situation, the only safe way to deal with a patient who's walking around in this state of being -- being, you know, under the influence of narcotics and benzodiazepines is to tell the patient that they can no longer be trusted to medicate themselves with these powerful drugs and that the time has come for humane, gentle detoxification so

that we can lower the doses of medication that this patient is getting.

Q Did Dr. Ruan prescribe Provigil for her? P-R-O-V-I-G-I-L.

A Provigil is the drug of the amphetamine class. It's related to methamphetamine and other drugs that are in the amphetamine class. And to prescribe Provigil because of the fact that the patient is being overdosed on opioids and overdosed on benzodiazepines is simply way below the rational standard of care for dealing with people who are in a near overdose state.

Q Did you see any indication that Ms. G..... was referred for any type of treatment?

A No.

Q And did Dr. Ruan also prescribe her controlled substance sleeping pills known as Zolpidem, Z-O-L-P-I-D-E-M?

A Yes, Zolpidem was also prescribed. And Zolpidem was also problematic drug because of the fact that it is associated with a strong possibility of patient suicide.

Q In connection with the prescribing for this patient, did [755] you determine that she was prescribed fentanyl, that is Subsys, and then Abstral at the same time?

A Yes. And that also makes no sense. All those drugs use fentanyl as the main active ingredient that is in those preparations. And it just makes no sense to prescribe poly-opioid prescriptions.

Q Did you find any indication that she had cancer?

A No.

Q And would Subsys and Abstral both be being used off-label since she did not have cancer?

A Yeah, that would be an off-label use.

Q Would that be an extraordinary high amount of controlled substances of opioids?

A I believe it was a very high amount of controlled substances and that the patient being under the influence as she was at home and stuporous, that it was -- it was extremely bad medical judgment and it was below the standards of legitimate chronic pain treatment.

Q Was there also some inconsistent urine tests for the narcotic or the opioid drug dihydrocodeine?

A Yes.

Q D-I-H-Y-D-R-O-C-O-D-E-I-N-E.

A Yes, there were inconsistent results for that particular substance.

Q Now, I direct your attention to February the 26th of [756] 2015. Did you determine that Ms. G..... received Abstral 400 micrograms, Subsys 400 micrograms, Abstral 400 micrograms, Subsys 400 micrograms, OxyContin 40 milligrams, and Norco 10 milligrams on the same date?

A Yes.

Q Those were prescribed by Dr. Ruan?

A Yes, and it was done without appropriate informed consent, in my opinion.



Q And was that prescribing outside the usual course of professional practice?

A Yes, absolutely.

Q Now, you also reviewed 14 other files; is that correct?

A Yes.

Q We're going to briefly hit on some of those and then I'm going to ask you your conclusions about the remainder of those files. But you've talked about Subsys and you've talked about Abstral, and are they commonly provided with what's known as a black-box warning?

A They have to have black-box warnings, and those black-box warnings have been relatively recent maneuvers of the federal government, specifically the FDA, to try to prevent unnecessary overdose problems.

Q What -- what does a black-box warning mean?

A What it means is that the combination of those drugs is extremely dangerous. And that the FDA sends out the black-box

\* \* \*

**APPENDIX H**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

FRIDAY, JANUARY 20, 2017

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DAY 9 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[2082] in Springfield, Illinois. I am interested in knowing the epidemiology and characteristics for patients who are fired or terminated by the pain physician from their practice.

Q I'll stop you there. Does this say there's really no data that he could find for his research about why patients get fired?

A Yes, sir.

Q And does Dr. Ruan then respond to this, what appears to be a medical student?

A That's correct.

Q And is this in 2012?

A Yes, it is.

Q What does Dr. Ruan say about firing patients?

A Yes, I think it is a great idea. In literature, physicians used to say zero tolerance, but in reality we fire patients rather infrequently. We always give folks one more chance. In private practice the more you fire, the more revenue you lose. So it is really how comfortable you feel by keeping folks for a little longer.

In academic institutions it is no big deal. Taking care of extra-trouble patients does not bring any additional income to the physician. So it is clear -- so it is a clear-cut decision. Private practice is different. Another interesting thing is when one patient tests positive for street drugs, that gives you more reason to do more frequent urine [2083] drug screens, which pays three times more than an office visit. So there is incentive for taking care of risk individuals. So a lot of factors are involved even if you do not see it on the chart.

Q I'll stop you there. Is Dr. Ruan -- is PPSA, is it a private practice or an institutional practice?

A It's a private practice.

Q Why does Dr. Ruan say it's a bad idea to fire or less than ideal? What are the ramifications of firing patients if you're in private practice like PPSA?

A It creates less of a patient base and therefore you have less revenue coming in.

Q And what is the benefit if somebody tests positive and you don't fire them?

A You can order additional tests.

Q And does he say that those are profitable or not profitable?

A Profitable.

Q During the course of your investigation have you had the opportunity to review a file of an individual named Kathleen Burns?

A Yes, sir.

Q I'm going to show you now what has been marked as Government's Exhibit 9-11. Can you identify what this is for the jury?

[2084] A Yes, sir. It's a patient file of Kathleen Burns.

Q I'm going to show you also what's been marked as Government's Exhibit 9-11A. Are you able to identify what this is?

A Yes, this is an Alabama PDMP report of Kathleen Burns.

MR. BODNAR: United States moves to admit Government's Exhibit 9-11 and 9-11A.

MR. KNIZLEY: No objection.

THE COURT: All right. Mark it in.

(Government's Exhibit 9-11 and 9-11A were entered into evidence.)

BY MR. BODNAR:

Q As an initial matter I'm going to show you what has been admitted as Government's Exhibit 12-2. Is this a chart that purports to be Top Off-Label Recipients of Subsys and Abstral as prescribed by Dr. Ruan and Dr. Couch?

A Yes, sir.

Q And looking down here at number 20, do you see Ms. Burns?

A Yes, sir, I do.

Q Based on the fact she is in red, which doctor does that signify she was a patient of?

A She was, I believe, Dr. Ruan's patient -- I'm sorry. A Dr. Couch patient.

Q No. If it's red, would that be Dr. Ruan?

A It would be Dr. Ruan. My fault.

[2085] Q And what was the total amount paid for her Subsys and Abstral for Ms. Burns?

A \$157,875.83.

Q Based on the fact that she's on a Top Off-Label Recipients list, did Ms. Burns have cancer or not have cancer?

A She does not have cancer.

Q And is that also reflected in your review of her file, of her not having cancer?

A Yes. Based on the file I was given to review, I could not find any indication of a diagnosis of cancer.

Q Based on your review of the file, were there numerous instances where it was listed that Ms. Burns was abusing her Subsys?

A Yes, sir.

Q Looking now at portions of the file admitted as Government's Exhibit 9-11 for Kathleen Burns, does this appear to be the history and physical for Ms. Burns?

A Yes, sir.

Q For what date?

A Date of visit is May 17, 2012.

Q Based on your review of the files, does this appear to be her first trip to PPSA?

A Yes, it does.

Q What is her chief complaint?

A Lower back pain, left leg pain.

[2086] Q In her family medical history does she list anything about cancer?

A Yes. It says: Significant for cancer, heart disease, hypertension.

Q Now, is that her personal medical history or medical history for someone in her family?

A That's family medical history.

Q How about under social history? What is reported apparently to PPSA right there? (Indicating.)

A Reports previous narcotic abuse.

Q And is that for the patient or for someone in her family?

A That's for the patient.

Q Now I show you what has been -- appears to be a progress note in the file for what date?

A February 18th, 2013.

Q A remark down at the bottom, what's noted on there?

A We will request PA authorization for Subsys.

Q I now show you what appears to be a progress note from the next visit. Is that May [sic] 18, '13?

A Correct. That's March 18th, 2013.

Q What does it list here happened with her Subsys?

A It says Subsys has been approved.

Q Does it say anywhere on there why Subsys was approved?

A No, sir.

Q It does not say why?

[2087] A No, sir, I could not find a reason why it was approved.

Q Does the record reflect copies of Subsys prescriptions in there?

A Yes, sir.

Q I show you now what appears to be a progress note from May 28, 2013.

A That's correct.

Q What's listed that Ms. Burns mentioned there?

A Wants stronger Subsys, used extra.

Q Then over here, what does it note in quotes for her?

A It states: Immune to Roxi, overuse due to pain, out of meds.

Q Does that appear to be Roxi or does it appear to say R-O-O for ROO medication?

A Looks like R-O-X-I.

Q Okay. Now I show you what is a next patient visit on June 25th, 2013. What does it note about her Subsys?

A Been using Subsys, last used Sunday.

Q And what does it say about a warning here?

A One warning given, opioid violation signed.

Q And is this the opioid violation from that same day signed by Ms. Burns?

A Yes, sir.

Q What are the two things marked about her being noncompliant?

[2088] A First one states: Out of prescribed medication early. Roxi 90 filled, 6-10, states flushed meds.

Q And how about the second one?

A Second one states: Noncompliance with treatment plans, out of Subsys early two days, today is fill-on date.

Q And does she sign it and note that she is going to take the medicine as prescribed?

A Yes, sir. She signs it, yes.

Q And does it specifically say: Take medications only as prescribed regardless of pain; we will not approve early fills?



A Yes, sir, that's what it says.

Q What's the date there?

A It is 6/25/2013.

Q Without going through this entire file, you have previously reviewed this, haven't you?

A Yes, sir.

Q Are there numerous examples of warnings given to Ms. Burns about her overuse of Subsys?

A There are, yes.

Q Does it mention that Dr. Couch -- sorry -- that Dr. Ruan specifically warned the patient himself about her overuse?

A Yes, I recall that.

Q Roughly how many times was she warned or noted in her file about overuse or misuse of Subsys?

A At least three or four times that I can recall.

[2089] Q At some point -- were there also indications in there about whether or not she was being approved for Subsys and Abstral?

A Yes.

Q While she was approved for receiving Subsys, was she ever fired as a patient?

A She was.

Q While she was being approved for Subsys?

A No, not -- not while being approved, no.

Q Did a time come where she was no longer approved for Subsys?

A Yes.

Q I'm going to show you what appears to be a return call from June 30th, 2014. And what's the date on here? Sorry. I just read that. June 30th, 2014?

A Yes, it does.

Q What is being stated here?

A Returned patient call. Patient has been denied for Subsys and Abstral. I sent the info to Krystal and let the patient know that since she does not have an active cancer diagnosis, that she probably would not be approved.

Q Prior to this date you had noted that there were numerous warnings given to her about her misuse of Subsys?

A Yes, sir.

Q Had she been fired before this date, though?

A No. She had not.

[2090] Q Was she fired shortly after this date?

A Yes, sir.

Q Is this the letter to Ms. Burns from Dr. Ruan stating she's being fired as a patient?

A Can you -- yes, sir. It looks like she was fired approximately nine days after --

Q Nine days after not being approved for Subsys and Abstral anymore?

A That's correct.

Q And what is -- what is the reason that she's being fired?

A It states violation of opioid agreement; habitually running out of prescribed medication.

Q And is that true?

A That is true.

Q She had numerous times been warned of that before this?

A Prior to, yes.

Q And the date on that is?

A July 7th -- I'm sorry -- July 9th, 2014.

Q Prior to firing her for her misuse of Subsys, I'm showing you again what was marked as Government's Exhibit 12-2. How much had been billed for Kathleen Burns' Subsys?

A \$157,875.83.

Q If she's no longer approved for Subsys and Abstral, can they bill her insurance for Subsys or Abstral?

A No, sir, they cannot. Or should not.

\* \* \*

**APPENDIX I**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

WEDNESDAY, JANUARY 25, 2017

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DAY 12 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[2585] A This graph is a comparison of Dr.  
Ruan's --

Q And I'm sorry. Could you pull your  
microphone a little bit closer? I still can't --

A Let me --

Q Thank you.

A What this graph is showing is a comparison  
of 2011 hydrocodone purchases by a practitioner. And

we're comparing what Dr. Ruan ordered compared to the Alabama average and to the U.S. average.

Q Now, if this -- if these drugs were being ordered by a pharmacy owned by Dr. Ruan, would these orders be under the pharmacy number or the doctor's number?

A It would be under the pharmacy number.

Q And were these under the pharmacy number or the doctor's number?

A It's under the doctor's number.

Q So would that be stuff distributed outside of the pharmacy from the doctor's office?

A That's correct.

Q And for hydrocodone, what is -- what does it mean by "dosage units," the 33,300?

A Dosage unit is -- we consider that a pill.

Q So this is -- does this appear to show then that in 2011 Dr. Ruan ordered 33,300 hydrocodone pills?

A That's correct.

[2586] Q Now, ARCOS doesn't say anything about how many, if any, were actually prescribed, does it?

A No. We don't collect that information.

Q Simply the amount that were ordered?

A That was ordered through the system.

Q And this second gray column here, what does this represent?

A That represents the number of practitioners in the state of Alabama that has ordered hydrocodone.

Q And that number is 800 and --

A 860, I think. Yes.

Q And of those 860, what was the average --

A The average was 1,691.

Q And you -- across the whole United States how many doctors or how many people's individual DEA licenses ordered hydrocodone pills?

A 23,398.

Q And what was the average for those?

A 2,165.

Q Would those numbers include all doctors across all specialties?

A That's correct.

Q So it's not excluding pain doctors from that list?

A That's correct.

Q I'm going to show you now what has been admitted as Government's Exhibit 41-2 -- 41-1 Subsection (2).

[2587] THE COURT: 41 or 40-1?

MR. BODNAR: 40-1 Subsection (2).

Q Is this a similar chart for Dr. Ruan for hydrocodone purchases?

A That's correct.

Q And for what year?

A It's for 2012.

Q And how many pills of hydrocodone did he purchase that year?

A 71,640.

Q And in 2013 -- I'm showing you now what is 40-1 Subsection (3). How many hydrocodone pills did Dr. Ruan purchase that year?

A 75,330.

Q I'm showing you 40-1(4). How many in '14?

A 72,510.

Q And 40-1(5)?

A That's 29,100 and that's only for a six-month period.

Q And is that the date range down here, January 1st through June 30th of 2015?

A That's correct.

Q Did you create similar charts for Dr. Ruan for the purchasing of morphine pills under Dr. Ruan's number?

A That's correct; yes.

Q And Dr. Ruan's DEA number, is that unique to him?

[2588] A Yes, sir.

Q So is it similar to like a Social Security number where you're able to track by a unique number, the number of purchases?

A Yes, sir.

Q Showing you what's been admitted as Government's Exhibit 40-2 Subsection (1). Is this Dr. Ruan's purchase of morphine?

A Yes, sir.

Q In 2011?

A Yes, sir.

Q Zooming in -- well, first, how many morphine units did Dr. Ruan purchase in '11?

A 15,510.

Q How many different doctors in the state of Alabama?

A 13.

Q And what's the number -- what's the average number for Alabama doctors?

A 2,656.

Q And does this show 300 doctors nationwide ordered morphine that year?

A Yes, it does.

Q Show you now what's been admitted as Government's Exhibit 40-2 Subsection (2). Is this a similar morphine chart for 2012?

A Yes.

[2589] Q How many did Dr. Ruan order?

A 30,210.

Q And what was the Alabama average?

A 5,559.



Q And just like we looked at for hydrocodone, does morphine also -- do these numbers also include all doctors across all specialties?

A Yes.

Q So that would include oncologists?

A Yes.

Q And pain doctors?

A Yes.

Q 40-2(3), is this the comparison chart for 2013?

A Yes.

Q And what is Dr. Ruan's purchase amount?

A 19,830.

Q And what is the Alabama average?

A 5,319.

Q Showing you now what's been admitted as Government's Exhibit 40-2 Subsection (4). Is this the similar chart for 2014?

A Yes.

Q How many did Dr. Ruan order?

A 23,910.

Q And what was the Alabama average?

[2590] A 4,463.

Q And finally, 40-2(5). What is this showing?

A Showing purchases of morphine from January 1st through June 30th, 2015. And the total was 10,350.

Q And how many different practitioners during that time period in Alabama purchased morphine?

A 10.

Q And what was the total number?

A 2,615.

Q Again, this is going to Dr. Ruan, not to C&R Pharmacy; is that correct?

A That's correct.

Q So would these be units that he presumably is dispensing out of his office?

MR. ESSIG: Your Honor, speculation. She has no idea how these drugs were dispensed.

THE COURT: Sustained.

BY MR. BODNAR:

Q Is it typical for a doctor to order drugs and then transfer it over to a pharmacy?

MR. ESSIG: Objection, Your Honor. No foundation. She has no expertise to give that answer.

THE COURT: Yeah, you need to establish some foundation for that.

BY MR. BODNAR:

[2591] Q Based on your training and experience do you know how the typical drugs are ordered by a doctor and by a pharmacy?

A Typically a doctor orders from a distributor -  
- I mean, a pharmacy orders from a distributor. Doctors can order by -- from a pharmacy. However, in my 12-and-a-half years experience, there's never been -- where a doctor supplied a pharmacy.

Q Is there a process that would need to happen or paperwork that would need to be done if a doctor was purchasing under his own number to supply a pharmacy?

A They would have to have the exchange of a DEA order form, a 222, and the doctor would have to -- the pharmacy would have to provide the doctor with a 222 form, the doctor would give them the pills, they both maintain copies of that 222 form.

Q And during the course of your investigation or during your analysis for this case did you come to see if C&R was in fact purchasing drugs under its own number as well?

A It was purchasing their own drugs.

Q I'm going to now show you what's been admitted as Government's Exhibit 40-3 Subsection (1). Is this a similar comparison chart for oxycodone?

A Yes.

Q And how many oxycodone pills were purchased by Dr. Ruan in 2011?

A 38,700.

[2592] Q What was the Alabama average?

A 6,023.

Q And from 38,000 -- I'm now showing you what's been admitted as Government's Exhibit 40-3(2.) From 38,000 in 2011 to 2012 how many oxycodone pills did Dr. Ruan purchase?

A 106,110.

Q What was the Alabama average?

A 6,653.

Q And in 2013, on Government's Exhibit 40-3(3), how many oxycodone pills were purchased by Dr. Ruan?

A 81,750.

Q And what was the Alabama average?

A 6,118.

Q For 2014, on Government's Exhibit 40-3(4), what does it show for Dr. Ruan's purchase?

A 82,020.

Q And what was the Alabama average?

A 6,930.

Q And finally, on 40-3(5), what does this show for part of the year 2015?

A 37,920.

Q And what was the Alabama average?

A 4,651.

Q I'm now showing you what has been admitted as Government's Exhibit 40-4(1). What is this that we see?

[2593] A It's a comparison of 2011 fentanyl purchases by practitioner.

Q And did you have an opportunity to check and see -- do these fentanyl purchases include Subsys and Abstral or is this patches?

A No, this is patches.

Q So does that mean 705 fentanyl patches were purchased?

A That's correct.

Q And what was the Alabama average?

A 314.

Q So from 2011 to 2012, on Government's Exhibit 40-4 Subsection (2), now how many fentanyl patches were purchased by Dr. Ruan?

A 2,050 [sic].

Q And how many was the Alabama average?

A Excuse me. That should have been 2,250.

Q And what was the Alabama average?

A 403.

Q I'm now showing you what has been admitted as Government's Exhibit 40-4 Subsection (3). Is this a similar chart for 2013?

A Yes, it is.

Q How many fentanyl patches were purchased by Dr. Ruan in 2013?

A 17,000 -- I mean 1705.

Q And what was the Alabama average?

[2594] A 285.

Q Now showing you what has been admitted as Government's Exhibit 40-4 Subsection (4). Is this for 2014 fentanyl patches?

A Yes.

Q How many were purchased by Dr. Ruan?

A 2,470.

Q And how many was the Alabama average?

A 304.

Q And finally with Government's Exhibit 40-4(5); is this for the partial year of 2015?

A That's correct.

Q Is that that same time period we've discussed, January 1st through June 30th?

A Yes.

Q What was the number of fentanyl patches purchased by Dr. Ruan?

A 875.

Q And how many was the Alabama average?

A 141.

Q Again, are these charts that we just looked through, hydrocodone through these fentanyl patches, comparing doctor to doctor?

A Yes, it is.

Q It's not comparing doctor to pharmacy?

[2595] A No, sir.

THE COURT: May I see counsel at side bar a minute?

(At the side bar, jury not present.)

THE COURT: I have a question about the exhibit, which you don't need to ask if you don't want to. And she may have already testified to this. But when you're talking about the Alabama average and U.S. average, does the Alabama average include Dr. Ruan or is it all doctors other than Dr. Ruan?

MR. BODNAR: I will ask that.

THE COURT: Well, you don't have to. But that's -- I wanted to know that information.

And also, does the U.S. average include all of the Alabama physicians as well or is it all the doctors other than Alabama physicians?

MR. BODNAR: It should be everybody, but I will clarify that.

THE COURT: All right.

(In open court, defendants and jury present.)

BY MR. BODNAR:

Q Ms. Jackson, we're going to use the -- wrap this up here at the moment just to clarify one point.

When the Alabama average is calculated, does that Alabama average include Dr. Ruan, so all doctors in Alabama or all doctors in Alabama without considering Dr. Ruan?

A Without considering Dr. Ruan.

[2596] Q Without considering Dr. Ruan?

A Without considering Dr. Ruan.

Q When you consider the U.S. average, is that the U.S. average including all 50 states or just the 49 states that don't include Alabama?

A They're all states.

Q So this, the U.S. average would encompass --

A Yes.

Q -- numbers that came from Alabama?

A Yes, it would.

Q But do -- is Dr. Ruan excluded when looking at the average for Alabama and average from the United States?

A Yes.

Q And is that the same on all the charts that we've looked at?

A Yes, it is.

Q As I asked you earlier, did you have an opportunity to determine if C&R was purchasing -- if C&R Pharmacy was purchasing drugs under its own number?

A Yes, it was.

Q I'm going to now show you what has been admitted as Government's Exhibit 40-5 Subsection (1). And what is different about this set of charts than the charts that we saw previously?

A This set of charts is in grams because we -- Subsys is a [2597] spray so it's measured by gram, micrograms.

Q It's measured by micrograms?

A Yes.

Q Is that 1 millionth of one gram?

A Yes.

Q And is that then totaled up and figured out in grams here?

A Yes, it is.

Q And who is the purchaser here?

A C&R Pharmacy.



Q So does that mean that a different DEA number separate from Dr. Ruan's purchased this Subsys?

A Yes.

Q How many grams were purchased of Subsys in 2012 by C&R Pharmacy?

A 5.38 grams.

Q How many other pharmacies in the state of Alabama purchased Subsys in 2012?

A 22.

Q And what was the average amount of grams purchased by pharmacies other than C&R in Alabama?

A .30.

Q And across the entire United States how many pharmacies purchased Subsys in 2012?

A .15.

Q Well, how many different pharmacies purchased it?

[2598] A 894.

Q And what was the average purchasing grams of Subsys that year?

A .15.

Q I'm now showing you what has been admitted as Government's Exhibit 40-5 Subsection (2). Is this a comparison for 2013?

A Yes, it is.

Q And again, are these purchases being made by C&R Pharmacy?

A That's correct.

Q How many grams of Subsys were purchased by C&R in 2013?

A 57.51.

Q And what was the Alabama average?

A 2.02.

Q And what was the U.S. average?

A .68.

Q And just as comparison, from 2012 how many grams did we talk about for C&R in 2012?

A 5.38.

Q And the following year how many were purchased?

A 57.51.

Q And into 2014 -- from '13 it was 57.51?

A That's correct.

Q In 2014 how many grams of Subsys were purchased by C&R Pharmacy?

A 105.03.

[2599] Q Is that almost doubling from what it was the year before?

A That's correct.

Q And is that roughly 20 times what was purchased in 2012?

A That's correct.

Q So in 2014 what was the Alabama average?

A 3.48.

Q And these charts are exclusive to Subsys; is that correct?

A That's correct.

Q It doesn't include any other type of fentanyl?

A That's correct.

Q Finally, in the partial year 2015 -- I'm going to show you what's been admitted as Government's Exhibit 40-5(4). How many grams of Subsys were purchased by C&R Pharmacy that year?

A 22.42.

Q And I think you have explained before that Subsys is measured in micrograms; correct?

A That's correct.

Q And does it come in individual sprays, if you know?

A That's what -- yes.

Q So is it actually being purchased from a wholesaler in grams or is that just adding up the total amount of Subsys purchased?

A No. When they would purchase it, when they put in for it, it's in a liquid form. So the distributor is selling by gram.

Q Total grams?

[2600] A Total.

Q To however it's divided up into the sprays?

A The sprays (nodding head affirmatively).

Q And for Subsys, does it work the way that you explained before where it will go from the manufacturer to the wholesaler to a pharmacy?

A That's the normal route, yes.

Q I'm going to show you now what has been admitted as Government's Exhibit 40-5 Subsection (5). Can you explain to the jury, what is this that we see here?

A Insys is the supplier for C&R Pharmacy for the Subsys fentanyl spray.

Q And by supplier, is that what -- does that mean wholesaler?

A That's correct.

Q So who are these three companies here? (Indicating.)

A They are Integrated Commercialization Solutions, Inc.; and the AmerisourceBergen Drug Corp. and McKesson Corporation.

Q Are these three companies what you described for us, kind of the middle spot for a drug from the manufacturer before it gets to the pharmacy?

A Correct.

Q If I'm reading across -- using the first line as an example, Integrated Commercial (sic) Solutions, what are these numbers under the year?

A Each year shows what is purchased during that time frame. [2601] So during 2012 there was nothing purchased.

Q From this particular wholesaler?

A From this particular wholesaler.

Q Same as 2013?

A Same as 2013?

Q And how about '14 and '15?

A In '14 it was 83.68 grams, and 2015 was 22.37 grams.

Q What was the total number of grams purchased by C&R Pharmacy from 2012 through that partial year of 2015?

A 190.34 grams.

Q And is that the total that came from the three wholesalers?

A That's correct.

Q Is it possible for a pharmacy to buy directly from the manufacturer?

A It is possible, if you would let me explain.

Q Okay.

A It's possible. There are transactions where a pharmacy can buy directly from it, but it's highly unusual for them to buy directly from a manufacturer.

When we do our ARCOS analysis, that is one of the things that will stick out to us and that we would forward that information to the field for further investigations because that is unusual.

Q The usual path would be to purchase from a wholesaler?

A Especially -- yes. If -- we also look at the history to

\* \* \*

[2826] Q Did you ever see your wife using Subsys?

A Yes.

Q Will you explain to the jury what if anything happened to her after she was using her Subsys?

A She would mainly do like any drug addict would do, get lethargic, pass out, and if she took too much I'd find her in the kitchen floor or anywhere else in the house, never knowing.

Q Mr. Burns, were there ever instances where you needed to call for medical assistance for your wife?

A Yes, sir.

Q Was that due to her taking Subsys?

A Yes, sir.

Q Can you explain to the jury what happened?

A She had taken too much and I walked into the living room, I woke up and she wasn't in bed. I walked into the living room and she was laying in the living room and I could not -- she was laying on the couch in the living room. And I could not wake her up. And something happened and I pulled her shirt up, you know, it came up some, and she had some patches on her plus the little bottles were there on the couch.

Q Did you have to call the ambulance?

A Yes, sir.

Q And did they -- did anyone come and treat her?

A Sir?

Q Did anyone come and treat her?

[2827] A Yes, sir. The ambulance came and they took her to the hospital.

Q Did this happen on more than one occasion?

A Yes, sir, it happened three times.

Q Do you know if there was a time period where she was fired or discharged from the --

A Yes, sir.

Q Can you -- what happened, if you know?

A I don't know exactly what happened in the office. But when she came back out to the car -- I always waited on her -- she came back out there and said: They -- they let me go.

Q Was she -- did she receive any medication?

A No.

Q What happened to her in the days immediately after being discharged?

A Well, she had -- we had to find another pain clinic that would help us get her down off that medicine.

Q Before you found another pain clinic, what if anything did your wife do?

A She went through withdrawals, just like anybody else would if they were on that stuff.

Q Did she try to obtain opiates anywhere else?

A Yes, she did.

Q What did she do?

A She would buy them off the streets illegally.

\* \* \*

**APPENDIX J**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

FRIDAY, JANUARY 27, 2017

---

DAY 14 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[3177] A Not that I know of, no.

Q Okay. Now, would you agree with me that it was your opinion in January of 2014 that PPSA was one of the best, well-rounded pain centers in the area?

A I'm not -- in the area? I mean, I'm not sure exactly what you mean by that. But I mean yes, we were --

Q Let me -- I'm sorry.

A We were the largest, yes.



Q Sir?

A Yes, I guess so.

Q That you would agree that in January 2014 that PPSA, in your opinion, was one of the best, well-rounded pain centers in this area?

A As far as I knew, yes.

MR. KNIZLEY: Thank you. Pass the witness.

MR. BODNAR: Redirect, Your Honor?

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BODNAR:

Q Mr. Cross, do you remember when you were speaking to Mr. Doss you mentioned about AR coming in, that you saw the AR coming in?

A Yes.

Q What is AR?

A The accounts receivable.

\* \* \*

[3291] Q And where were you located in each of the offices? Were you stationary?

A Yes, I had an office in both locations.

Q I want to direct your attention while you were there. Did you have occasion to know how many patients were seen daily approximately?

A Sometimes upwards of 200, 150 to 200.

Q How is it that you would know that?

A Because my office was up front, I'd see the patients as they come in.

Q Do you know approximately how many per day were under the care of Dr. Couch? And if you don't -- do you know?

A I'm not sure.

Q Do you know if any of the patients were from out of state?

A Yes.

Q How did you know that?

A I just know that we had some that traveled from other areas because they had to call and make arrangements for their appointment.

Q Do you know where they came from, what states?

A I think we had some from South Carolina, North Carolina.

Q Did you have some from Mississippi and Florida?

A Yes.

Q And some from other locations within the state of Alabama?

A Yes, yes.

\* \* \*

[3299] A On more than one, daily.

Q And that would be on the days that you were in the same location?

A Yes, yes.

Q Now, of course, you know Dr. Couch and Dr. Ruan from working there?

A Yes.

Q And are they both in the courtroom today?

A Yes.

MS. GRIFFIN: If the record would reflect the defendants are present in the courtroom?

Q Ms. Tims, did you observe how long the nurse practitioners would see the patients in these followup visits for Dr. Ruan?

A They would be in there a good few minutes with the patients. I don't know exactly the time.

Q And were you aware that patients had to wait a long time to be seen?

A Yes.

Q Can you tell us how patients were booked for Dr. Couch and Dr. Ruan?

A I know, say if it was 8 o'clock, there would be four patients booked for 8 o'clock.

Q Are you talking about 8 a.m.?

A 8 a.m.

Q What time did the office open?

[3300] A 7.

Q And is four a large number to be booked for the 8 a.m. slot?

A Yes.

Q Could you explain that to us?

A Well, you can't see four patients at one time.

Q Was that done all the way through the day on Dr. Ruan's schedule?

A Yes.

Q Was it done through the day on Dr. Couch's schedule?

A Yes.

Q Did there come a time when you decided you wanted to leave PPSA?

A Yes, ma'am.

Q Why was that?

A Well, I was fearful of going to work because of having to deal with irate patients, you know, just about on a daily basis. Just did not feel comfortable working there.

Q Was there anything specific that made you feel uncomfortable about patient treatment?

A Uh, yeah, I mean, I didn't like the way the patients were treated. They were just, you know, brought in in large numbers. It didn't feel like they were getting the attention that they needed, in my opinion.

Q Do you know how long the patients would stay after they [3301] finally were able to get back to see either Dr. Couch or Dr. Ruan in the back?

A In the back, just a few minutes.

Q And what if anything do you know about C&R Pharmacy, if there were any directions to the patients about the pharmacy?

A They were told there was a pharmacy in the back of the office at the Airport location, at the back

of the building, that they could fill their prescriptions there.

Q Now, you also said you were able to observe the doctors. Did Dr. Couch come in every day at 7 or 8?

A No.

Q Could you tell us what you observed?

A That he was late a lot of the time.

Q What times would you observe him come in?

A Between 9 and 10.

Q Was anyone there seeing his patients before 9 or 10?

A Justin.

Q That's Justin Palmer?

A Yes.

Q Ms. Tims, did you have occasion to see or overhear any patients complaining about one of the doctors?

A Well, patients were complaining a lot about just having to wait so long and then not getting to see the doctors that much.

Q You overheard that?

A Yes.

\* \* \*

[3336] Q Could you tell us how patients were booked?

A Depending on the day, some days you would have them double, triple, or sometimes quadruple booked.

Q What do you mean by that?

A So if your time slot was for 8, on our computer screen we had four different blocks that the patient -- we could put patients in.

Q Did that create an issue with patients waiting?

A Yes, ma'am.

Q Could you explain that to us?

A Because if you have a patient that's checked in -- or all four of them show up at 8 o'clock, they all cannot be seen at 8 o'clock. So you're having to push back. So that would push the time frame back for the other patients once they were checked in also.

Q While you were there on Dr. Couch's team, did he typically see the first-time patients or do you know?

A Normally he would see the first-time patients. There was occasions when a first-time patient would come in when he wasn't in the office.

Q Would someone see the first-time patient when Dr. Couch was not in the office?

A Yes, ma'am. Either the nurse practitioner or the nurse anesthetist would see the patient.

Q Not another doctor, though?

\* \* \*

**APPENDIX K**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

MONDAY, JANUARY 30, 2017

---

DAY 15 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[3519] A Yes, ma'am.

Q When was that?

A September 24th, I believe.

Q Of what year?

A 2016.

Q Now, Mr. Douthitt you gave us an example of the pill price that you were able to sell some of these pills for prior to PPSA being raided. I'll direct your

attention to after May the 20th of 2015 and ask if you were able to buy and sell pills on the street after PPSA was raided.

A Not really. The pills on the street --

MR. KNIZLEY: Your Honor, I'll object. Beyond the scope of --

MS. GRIFFIN: May we approach?

THE COURT: All right.

(At the side bar, jury not present.)

MS. GRIFFIN: Your Honor, there is an allegation, of course, that this is a pill mill. And he's going to talk about the prescription pills dried up on the street right after PPSA closed and that people began to have counterfeit pills and that people who had legitimate pills, the price was sky high. And it's our contention that was as a result of the search and the shutting down of PPSA.

MR. KNIZLEY: Your Honor, that's total speculation. No basis whatsoever for that. It's just -- there would have to [3520] be a basis he knew this complete market, if you would, in the community and he would have to know the volume of PPSA pills that were illegitimate that went into the community. And for him to make an assessment or imply or opine to the jury that there was now an increase in price driven by the closure of the clinic, it's just sheer speculation on his part.

MS. GRIFFIN: Your Honor, he's testified that he had been a buyer and a seller on the street and he certainly knows whether he was able to buy again and whether the prices went up and whether there were any available.



THE COURT: I don't think he can speculate as to the cause, but I think it's relevant testimony and subject to cross-examination. So --

MR. KNIZLEY: Okay. The only objection for the record, Judge, is outside the scope of the time frame of allegations of the indictment.

THE COURT: I think it's relevant to it. So I overrule the objection.

(In open court, defendants and jury present.)

BY MS. GRIFFIN:

Q Mr. Douthitt, you had been buying and selling pills on the street; is that right?

A Yes, ma'am.

Q After May the 20th, 2015, could you tell us, on your experience, if the pills were harder to find?

[3521] A Yes, they were a lot harder to find.

Q I cannot hear you.

A Yes, ma'am, they were a lot harder to find and they were more expensive.

Q What do you mean by more expensive?

A The price almost doubled. Say if I was to buy roxy for about 20 or \$25 a piece, they went up to 35-\$40 a piece and usually they were fake.

Q What do you mean by fake?

A People were buying pill presses and pressing counterfeit pills.

Q So they weren't real?

A No, they wasn't.

Q Did you then switch to something other than prescription pills that you were using?

A Yes, ma'am, I did.

Q What was that?

A It was heroin.

Q How is it that you were able to afford heroin?

A I had a job.

Q And what would you do with the heroin?

MR. KNIZLEY: Your Honor, relevance.

THE COURT: Sustained.

MS. GRIFFIN: Your Honor, if I might just ask him whether he used some of the heroin?

\* \* \*

[3600] Q I want to direct your attention from early 2011 till October of 2013. Were you working at PPSA during that time?

A Yes, ma'am.

Q In what capacity?

A I was a certified medical assistant.

Q What were you called? Was that an MA?

A Yes, ma'am.

Q What training does that mean you had had?

A I went to a two-year college. I have an associates's degree. It pertains with vital signs, venipuncture, phlebotomy, which is the venipuncture injections, assisting in X-ray, assisting in EKG.

Q Were those some of your duties there at PPSA?

A Yes, ma'am.

Q Were you assigned as an MA to Dr. Ruan?

A Yes, ma'am.

Q Is he in the courtroom today?

A Yes, ma'am.

Q Could you point him out for us?

A He's right here (indicating).

MS. GRIFFIN: If the record will reflect she's identified the defendant Ruan?

Q Now, Ms. Crawford, during the time you were there approximately how many patients was Dr. Ruan seeing a day?

A He could see as much as like 50 patients a day.

[3601] Q Was he actually seeing all 50 of those patients?

A He had nurse practitioners assisting.

Q What did they do?

A They also seen patients based off our vital signs, the triage that we did as medical assistants, seeing new patients coming in, intaking them.

Q Would Dr. Ruan see all 50 of those patients during each visit?

A No, ma'am. Sometimes the nurse practitioners did.

Q Did you have occasion to see any prescription pads at PPSA that were Dr. Ruan's?

A Yes, ma'am.

Q Could you tell us how it is that you had access to those?

A We would write prescriptions for the patients prior to them coming in, give them to Dr. Ruan or the nurse practitioner when he needed to sign. Also when new patients will come in, we will write whatever prescriptions were prescribed at that time.

Q Now, Ms. Crawford, you said you would get the prescriptions ready before the patient came in?

A Yes, ma'am, if they were returning patients. Uh-huh (nodding head affirmatively).

Q So you would base it on what they had been prescribed before?

A Yes, ma'am.

Q And would Dr. Ruan sign some of those repeat patient [3602] prescriptions before the patient came in?

A Yes, ma'am.

Q Did you also have occasion to see what is referred to as a blank prescription that was presigned by Dr. Ruan?

A Yes, ma'am.

Q Can you explain what a blank prescription means?

A A blank prescription will be no medication, no quantity filled in, just the signature of the doctor.

Q No patient name either?

A No patient name either.

Q But the prescription would have Dr. Ruan's signature already on it?

A Yes, ma'am.

Q How is it that you were able to see those?

A If, by occasion, he is out of the office, if the nurse practitioner was seeing them or the patient will call in for a medication refill, sometimes we'll just go in and tell him that the patient called in for the prescription and he'll just sign the prescription and we'll put the information on there as far as the medicine, the patient's name, and the quantity.

Q And would those be controlled substances on occasion?

A Some, yes, ma'am.

Q But I want to go back to the ones that you said were presigned, blank prescriptions. Who would use those blank presigned prescriptions that you saw?

[3603] A The nurse practitioner and the prescription nurse.

Q Was the prescription nurse different from the nurse practitioner?

A Eventually it was throughout the time that I was there. All the -- the MA used to do all of the prescriptions, along with the nurse practitioner. But then they assigned a nurse, prescription nurse.

Q To take telephone calls?

A Telephone calls, refills on the prescriptions.

Q So are you telling us that Dr. Ruan would leave prescription pads that already had his name on it to give to a patient with whatever prescription the NP decided to put on there?

A Yes, ma'am.

Q Would you prepare prescriptions the day before someone was to come in for the next day's patients?

A Yes, ma'am.

Q And would Dr. Ruan presign those as well on occasion?

A Yes, ma'am.

Q Were these controlled substances that were being filled in on the blank prescriptions, blank signed by Dr. Ruan prescription pads?

A Yes, ma'am.

Q Who would go about approving refills of the controlled substances?

[3604] A Dr. Ruan would.

Q Would his NPs ever approve the refills?

A Yes, ma'am.

Q How would you know that?

A We -- if Dr. Ruan wasn't in the office or able to contact, then our go-to person would be the nurse practitioner to find out about refills.

Q So if the nurse practitioner approved a refill on a controlled substance, the patient would receive the refill?

A That is possible, yes, ma'am (nodding head affirmatively).

Q Was there a time when your group moved to the office next door, to C&R Pharmacy; that is, the office of the Airport location?

A Yes, ma'am.

Q That was the first time you had a pharmacy right next door under the same roof; is that right?

A Yes, ma'am.

Q What if anything did Dr. Ruan tell you about patients using C&R Pharmacy?

A To encourage them to use our pharmacy, notify them that we do have an in-house pharmacy.

Q And I think you told us there were times that patients came in and they would not see Dr. Ruan at all; is that correct?

A Yes.

Q Who would see them when they didn't see Dr. Ruan?

\* \* \*

**APPENDIX L**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

TUESDAY, JANUARY 31, 2017

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DAY 16 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[3628] patient.

Q Were there times where the patient would be upset about changing from one medication to the other?

A Yes, there were.

Q Can you explain that to the jury?

A Some patients had been on a certain regimen and a new medication was presented to them, and they often questioned -- some of them questioned why



they were being switched. And I would tell them for whatever reason, perhaps this medication Dr. Ruan wanted them to try, give it a try, and see maybe if it would work at controlling their pain better.

Q And the patients that were upset, do you know if it was because their previous medicines had been working?

A Yes. Generally speaking, a lot of times they felt their medications were working.

Q And yet they were still switched?

A Yes.

Q Were you aware of speaking engagements or drug reps being present in the office?

A Yes.

Q And was it for a variety of different drugs?

A We had a number of reps coming in.

Q What, if any, correlation did you observe between the drug reps that were there and speaking programs and what was being prescribed to the patients?

[3629] A Natalie Perhacs, who was the Insys rep, was at the office quite frequently. And I knew that Dr. Ruan was participating in the speaker programs for them. And she would come in once or twice a week.

Q And what was the drug that Insys made?

A Subsys.

Q And was there any correlation between her being there and speaker programs that you saw and patients being prescribed Subsys?

A Yes. We had a big push initially to prescribe Subsys. They offered a voucher for the product free. And when that product was launched and Dr. Ruan became a speaker for Insys, there was a big push to push -- put patients on that drug.

Q Now, when you say -- do you know what Subsys is intended for, what its indication is?

A Yes. It's for breakthrough cancer-related pain.

Q Do you have a rough estimate of approximately how many patients at PPSA had cancer, active cancer?

A Probably 10 to 15 percent.

Q Were there patients being put onto Subsys that did not have active cancer pain?

A Yes.

Q Were there other patients that in your clinical belief that you didn't think needed Subsys at all?

\* \* \*

[3631] A At C&R Pharmacy.

Q And where was C&R Pharmacy located?

A It was located in the building on Airport.

Q And is that the building you also worked at?

A Yes.

Q What, if any, direction was given to patients about going to C&R Pharmacy?

A They were strongly encouraged to fill their prescriptions in-house at the pharmacy.

Q Who gave that strong encouragement?

A Dr. Ruan.

Q Did he personally do it or was it through a nurse practitioner?

A Well, I mean, that was the instructions, that we wanted patients to be filling prescriptions in-house.

Q When you put patients on Subsys, what, if any, warnings were given to the patient about what the drug was?

A The drug -- there was a form that came with that, a REMS form, a risk form. And you're supposed to review that with the patient and go over the risks of the medication, including respiratory depression, even death, keeping the medications safe and away from others.

Q And was Dr. Ruan giving the -- was Dr. Ruan himself giving those warnings to patients?

A No. That was left up to the nurse practitioner.

\* \* \*

[3656] A No, I generally did not see any patients that were work comp patient. That was Dr. Ruan (nodding head affirmatively).

Q So Dr. Ruan would be the one that saw the workers' comp patients?

A Yes.

Q Do you know how workers' comp patients filled their prescriptions?

A Yes. When a workers' comp patient was seen, they were filled directly in-house from an in-house dispensary. And they were presented, for example, with a brown paper bag with their three months' worth or their two months' worth of their medications in that.

(A discussion was held off the record between government counsel.)

BY MR. BODNAR:

Q I'm going to go back and touch on a few areas. Do you recall discussing about how you would present patients to Dr. Ruan while you worked there?

A Yes. I mean --

Q When you did that -- and you mentioned his office -- would the nurse practitioners have to wait and line up for their turn?

A Yes. If we all were overlapping, it would be not uncommon that it would be whoever could be first in line so we could, you know, move along with our day. So, you know, it might be [3657] myself first, Shanna second, Bridgette third in the line.

Q And would that be a repeat process throughout the day?

A Yes, throughout the day.

Q What would happen for a return patient who needed their medications changed? How would that work?

A Generally I might talk to the patient, and then I would go to Dr. Ruan and present that. And I would say: This medicine is not being effective. Do you want to consider changing her to this or that? And then let Dr. Ruan make the ultimate decision.

Q In those instances where medication was being changed or the dosage was being changed, would Dr. Ruan always go in and see the patient?

A No.

Q Who then relayed the information about your medicine is being changed to a different drug?

A Myself.

Q When you talked about Bridgette, you mentioned that you thought she had no grasp on what to prescribe?

A (Nodding head affirmatively.)

Q Explain, though, did Bridgette have a DEA license?

A No.

Q So what do you mean that she had no grasp on what to prescribe?

A For example, there's usually a protocol that we follow [3658] for instituting certain drugs. For example, if a patient was opioid naive or they had not been on a certain pain medication, you wouldn't go in and start that patient on, for example, a fentanyl patch. That would be dangerous for that patient.

Q Why would that be dangerous for that patient?

A Because their body is not used to any narcotic. And putting a fentanyl patch on someone could pose a danger if their body wasn't prepared for that.

Q Is that what's called opiate naive?

A Yes.

Q Were there other issues that you had with Bridgette and her clinical dealings?

A Yes. She just didn't seem like she was, again, focused, keeping up with -- following through with, you know, knowing what the patient was there for. I had complaints from patients. I had some patients that complained that they believed Bridgette had taken some of their pain medicine and one patient who told me that -- after I came in, she said -- she was an elderly woman, and she said: Well, I'm going to tell you all you need to get that girl some help. I think she needs more help than I do. And I asked her who she was talking about, and she explained Bridgette had seen her the visit before. And she said that Bridgette was talking to her and then kind of fell over on the exam table herself. And the patient was obviously a little bit upset by this.

[3659] Q And did you ever raise these concerns about Bridgette with either Dr. Ruan or Dr. Couch?

A Yes.

Q What did you -- well, first, who did you tell? Dr. Ruan or Dr. Couch?

A Dr. Ruan.

Q And what did you tell Dr. Ruan?

A That I had concerns about Bridgette and her capabilities. And I also reported it to the management staff of PPSA that Bridgette appeared impaired.

Q Who would be the management staff?

A That would have been Debi Phillips and Hunter Swanzy.

Q Prior to Hunter Swanzy, was there another individual named Ken Cross?

A Ken Cross, yes.

Q What, if anything, did Dr. Ruan say to you about Bridgette?

A I don't recall specifically that Dr. Ruan and I, you know, had a discussion on that beyond that I just told him I was concerned.

Q Now, you had mentioned it appeared that -- you said that Bridgette was obviously impaired to you?

A Yes.

Q Do you think or do you know if that would be obvious to somebody else looking at her?

A I would assume, yes.

\* \* \*

[3762] doctor would do. I mean, he would ask me questions and wanted to make sure that I felt like my medications were okay. So I just assumed -- other than him going out of the room -- I thought he had a desk that he did prescriptions at.

Q How is it you learned that he was not Dr. Ruan?

A I was talking to him and I said: Dr. Ruan. He said: I'm not Dr. Ruan. I'm Matt, Dr. Ruan's nurse practitioner.

Q Did there come a time when you did see Dr. Ruan or were introduced to him rather?

A Yes, ma'am.

Q Could you tell us about that?

A That was probably maybe the fourth or fifth visit. And he just stuck his head in the door and said: I'm Dr. Ruan, nice to meet you. Is everything going okay? That's basically what he did.

Q Did he ever do any exam of you, Dr. Ruan?

A Not that I recall. Everything was done by Matt.

Q When you first met Dr. Ruan, did you see him thereafter on any of your patient visits?

A Maybe two or three (nodding head affirmatively).

Q Would you be seeing him alone or would you see him while Matt Bean was in with you?

A Matt was always in there (nodding head affirmatively).

Q How is it that you saw Dr. Ruan if Matt was in there those [3763] two or three times?

A Well, Dr. Ruan just stuck his head in the door and said: How are you doing? Everything okay? See you next time.

Q Approximately how long did you see Dr. Ruan the three or four times you saw him?



A Maybe 30 seconds.

Q Each time?

A Yes, ma'am.

Q In connection with your first visit, you said you did not see Dr. Ruan; is that right?

A Right.

Q Did you receive any prescriptions that first visit?

A I did.

Q Do you recall how many?

A Maybe eight to 12.

Q Was that a large number for you?

A It was kind of shocking, yes, ma'am. But I was willing at that point to do whatever anybody said who had a medical license because I was in severe pain.

Q So did you fill the majority of those prescriptions?

A Yes, ma'am.

Q Then when it came time for the second and third visits, were any of those medications changed?

A They would change doses, play around, higher a dose, lower a dose, trying to get me, I guess, leveled out and not -- but [3764] one time that I did see Dr. Ruan and Matt together, they told me I needed to go to my primary care physician and have a liver profile done at least every three months and bring them a copy.

Q And when you said "they" would change your prescription, who are you talking about?

A Matt.

Q Did you know whether or not Matt had a DEA license that he could prescribe prescriptions?

A No, ma'am, I did not know.

Q You never had a DEA license, did you?

A No, ma'am. I don't think that's normal for nurses to have a DEA license. I don't know. But --

Q Ms. Buckley, were you also -- were some studies and procedures ordered for you?

A Yes, ma'am.

Q Were some nerve studies ordered for you?

A Yes, ma'am (nodding head affirmatively).

Q Did you have a high copay for those nerve studies?

A Yes, ma'am.

Q Do you recall approximately what it was?

A I believe it was \$150 that was my copay. And my MRI, I believe, was maybe \$200.

Q Now, you indicated that sometimes you would come every month and then on one or two occasions you were allowed to come every 60 days; is that right?

\* \* \*

**APPENDIX M**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

---

CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

WEDNESDAY, FEBRUARY 1, 2017

---

DAY 17 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[3878] BY MS. GRIFFIN:

Q In connection with the prescribing of Subsys and Abstral, why were you placing patients on Subsys and Abstral?

A It was no different than any other medication.

Q Were you the one that made the call to place a patient on Subsys or Abstral?

A Uh-huh (nodding head affirmatively).

THE COURT: You have to say yes or no.

A Yes, ma'am.

BY MS. GRIFFIN:

Q Did Dr. Ruan change between Subsys and Abstral?

A Yes, ma'am.

Q Could you explain that to us?

A It just -- I mean, I can't explain exactly why he did it.

Q Could you tell us if he changed a patient on one to the other and back on occasion?

A I never knew why -- I never understood why I was doing that.

Q Did he do that is what we're asking?

A Oh yes, ma'am, uh-huh.

Q Could you explain that to us?

A Well, you know, a patient -- some of it is cost, some of it is the availability to get the drugs.

Q By "availability" what do you mean?

A It was such a uncommon drug that patients had a hard time [3879] finding it, someone to prescribe -- I mean, you know, to fill it. And then if they found someone, they had to wait for, you know, usually precertification. Whatever has to be done with insurance.

Q Did PPSA have a connected pharmacy?

A Yes, ma'am.

Q What was the name of the pharmacy?

A C&R.

Q Which of the buildings was it connected to?  
Which of the PPSA locations?

A The one on Airport Boulevard.

Q Is that right?

A Yeah, the one on Airport Boulevard.

Q Do you know if C&R stocked Subsys and  
Abstral?

A Yes, ma'am.

Q How do you know that?

A You know, sometimes I would walk in there  
for whatever reason, you know, for them to give --  
some question about the prescription. But then other  
times I was -- I mean he just wanted to know what we  
had in stock. So I'd walk around there and see.

Q All right. Let's break that down. You said  
sometimes you would go in there. Go in where?

A In the pharmacy.

Q Into C&R?

\* \* \*

**APPENDIX N**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

FRIDAY, FEBRUARY 10, 2017

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DAY 23 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[5282] MR. ARMSTRONG: One moment, Your Honor.

THE COURT: All right.

(A discussion was held off the record between defense counsel.)

BY MR. ARMSTRONG:

Q One last question, Dr. Gudin. With regard to everything you've just testified about, taking all that into consideration, in considering your review of each

and every patient chart that you've told the jury that you reviewed -- and again, you reviewed those patient charts -- did you skim them? Did you just do a summary? Or did you go through the charts?

A I read each and every page of every medical record that I was provided.

Q And is it your opinion that -- is it your opinion that Dr. Ruan's treatment of each of his patients was within the course of professional medical practice and for a legitimate medical purpose?

A As I outlined in my expert report, each and every chart that I reviewed of Dr. Ruan's, the prescribing seemed appropriate and certainly within the course of legitimate medical practice.

MR. ARMSTRONG: I think that's all. Thank you, sir.

# CROSS EXAMINATION

BY MR. BODNAR:

\* \* \*

**APPENDIX O**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

TUESDAY, FEBRUARY 14, 2017

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DAY 25 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[5779] sublingual spray?

A That's correct.

Q And so they were both revolutionary, you're saying, to some degree?

A They were both of this type delivery. This is the only two available for sublingual formulations.

Q Do you remember the month you told me in 2013 -- in '13, I believe it was, that Natalie Perhacs



began to be a representative. Do you remember what month that was?

A I do not really recall when she became a drug rep.

Q I think you mentioned earlier maybe March, does that sound -- in March or April, does that sound correct?

A That's from my recollection. I really --

Q That's what, sir?

A Probably that's what --

Q So in March or April you had already began the Subsys prescribing; is that correct, before she came along?

A Right.

Q And tell the ladies and gentlemen of the jury why you again spoke for and prescribed this medication?

A Because this -- the medication is very unique. It really help people that -- with the severe breakthrough pain. The -- to differentiate this medication, when I prescribed, I put it for very severe breakthrough pain. I do not just write p.r.n. for pain. I use it for very severe breakthrough pain, [5780] therefore patients don't have to use them if they do not have those severe pain episodes. Early on it was mostly voucher program and --

MS. GRIFFIN: Your Honor, I object to this form of testimony. It is not question and answer. And it's not responsive.

THE COURT: Overruled.

BY MR. KNIZLEY:

Q Let me pose another question to you, Doctor. And were you finished with your answer about your opinion of Subsys?

A So in patient, when I see good indication, when I see that people can benefit from using it, I start prescribing it. And these medications -- and I told them not to use it for regular breakthrough pain. That's one of the reasons you see one of the witnesses, she used it for five months, 30 doses.

Q What's the difference to not use it for regular breakthrough pain? Are there more than one type of breakthrough pain?

A Well, depends on the severity. Some people, they may call it breakthrough pain, probably five.

Q Back away a little bit so Mr. Isbell can hear you.

A Some people have breakthrough pain episodes, eight or nine, have to go to ER, go to hospital. For people that experience that type of pain, this is lifesaver. They don't have to go to hospital. They can use it for that occasion. So we very well

\* \* \*

[5786] A Yes.

Q And typically -- we're getting back to Insys here when you were speaking for them here in the Mobile area -- what was a typical compensation you would get from them?

A Between 1,500 to 3,000 per speak.

Q And how much time -- of your time does it take for you to do that?

A Away from the practice, the facility, go through the presentation, finishing the discussion and coming back, it's about one -- one and a half hours.

Q And in your pain management practice could you have made that equivalent amount of money or more if you had stayed in the office?

A If I see people, do procedures, yes.

Q Did any of that money that you got from Insys or any other company, for that matter -- we'll talk about Insys in particular -- have any influence whatsoever on your prescribing practices of the product Subsys?

A Absolutely not.

Q And why not?

A What you prescribe, that's a decision, a clinical judgment decision. Patients had to be the only reason; number one reason, the only reason. I think Natalie almost fired because I wrote many low dosage. The company wasn't happy. Even that, it was always patients. No other reason.

[5787] Q And Natalie almost got fired. I thought Natalie was a friend of yours; is that right?

A Right. That's correct.

Q And you were -- you had a personal and business relationship with her; is that correct?

A That's correct.

Q And you wanted to help her?

A Yes.

Q Well, then why didn't you prescribe the medication her company was paying you money for to speak about?

A Patient -- sorry. Patient need, that's all there is.

Q Now, at these lunches, whose obligation was it to get the attendees at the lunches?

A Natalie.

Q And did you have any responsibility in that regard?

A I don't believe so.

Q Did you take on any responsibility and try to help from time to time, to get people to attend these lunches?

A Many times.

Q And could you tell the ladies and gentlemen of the jury what you did, and who you might have tried to get there?

A Might be dozens of emails every time before the talk. I emailed Natalie, I said: Natalie, who are coming? I said: Do you want me to get other physicians? Do we have enough audience? Many emails in my email with Natalie was on these

\* \* \*

[5803] A That's correct.

Q Tell the ladies and gentlemen of the jury why you did that.

A What medication to use, not just these type of product, any medication you use is the decision --

the individualized decision based on the patient's best interest, not just any physician -- any product.

Q Did your Subsys prescriptions stay higher than your Abstral prescriptions almost entirely during the time frame that you owned the Abstral stock?

A I think so.

Q Were there other fentanyl-based TIRF drugs that you also prescribed during the time frame you owned the Abstral stock?

A Yes.

Q What were their names?

A Fentora and Lazanda.

Q Could you have substituted Abstral for those products as well?

A Yes, I could.

Q And would it have had at least a similar if not the same medical benefit to the patient?

A Yes.

Q Why didn't you do that if you owned all that stock?

A We said that before. It's really a decision based on the patient; nothing to do with stock, speaker, absolutely nothing to do with that.

\* \* \*

[5823] have an abuse-deterrent feature in similar medications?

A Other opioid, yes.

Q Other opioids?

A Right.

Q Could you tell me or the ladies and gentlemen of the jury what this abuse -- what other companies may have also developed an abuse-deterrent feature in a medication after Exalgo did?

A OxyContin, for example. The new formulated Opana ER had that feature too, then the hydrocodone product. But Purdue had the same feature. You cannot crush the abuse-deterrent -- different feature so --

Q And those features came to your attention after Exalgo's abuse-deterrent feature?

A I'm pretty up-to-date with all the different company producing different drugs and I tried to use it whenever my patient get benefit. That's one way I try to impress my patient, when they --

Q What effect did any speaking engagements that you had with Exalgo have on your prescriptions of the medications?

A No, no effect. No specific effect.

Q You told us earlier in your testimony that there was a pharmacy attendant to the Airport Boulevard practice known as C&R Pharmacy; is that right?

A Beg your pardon?

Q All right. You told us earlier that C&R Pharmacy was a [5824] pharmacy that was owned by you and Dr. Couch that was associated with or connected to or in the same structure as the Airport Boulevard PPSA Clinic; is that correct?

A That's correct.

Q And you've told us a little bit of the history of that. And when C&R was initially formed, you told us that it had -- you ran it yourself in the sense that you hired employees to run it; is that right?

A We initially have a pharmacist. She ran it herself. It just didn't work. It could not sustain. So --

Q When did that change?

A That's when we had invited McConaghy to take over.

Q Before McConaghy, how was the pharmacy doing?

A Before McConaghy, the major problem with the C&R Pharmacy is once the pharmacist is off, nobody can get to the pharmacy, the regulation. So patients have prescriptions --

Q I'm sorry. Nobody can get to pharmacy what?

A Nobody could get into the pharmacy once the pharmacist off. There was no back up. We could not afford back up.

Q Why? Why could no one go to the pharmacy when the pharmacist was off?

A It's a regulation. If the pharmacist is not there, pharm tech cannot get in.

Q Go ahead.

A So when that happened -- one day the pharmacist was off for [5825] three days, patient waiting in the office could not get their drug. We do not even know what their medications were. It caused a major mistake, which is so much trouble. We just

decided we can't run the practice that way. You remember, a lot of money from PPSA transferred into pharmacy to keep it floating.

Q You say I remember it. Are you speaking of the records that you saw admitted into evidence earlier which had payments from PPSA to C&R Pharmacy?

A Right.

Q What was the purpose of those payments that you saw earlier in the records that were introduced here?

A Because C&R Pharmacy could not sustain, so we had to use PPSA to feed -- just keep it floating. So that was the reason. You keep transferring money from PPSA to C&R Pharmacy.

Q Was the pharmacy not profitable at that time?

A Either management or just didn't work.

Q And did you change the management and the way that C&R Pharmacy operated when you contracted with Mr. McConaghy?

A Yes. One of the reasons -- one of the reasons with McConaghy is we typically ran out of medication two weeks before the monthly allowance. By the time you run out of medication you are forced to switch because the pharmacy had no other -- there's a limitation. Most people chose to fill there at C&R Pharmacy. However, we do not have enough supply. And [5826] that's how we ended up with only having 20 percent of people actually using our pharmacy.



Q What do you mean 20 percent of the people using the pharmacy? What are you talking about?

A Of all this -- you saw the date that provided 24.1 percent people using the pharmacy.

Q Of your patients at PPSA you're speaking of?

A Yeah; that's right.

Q Now, 75 percent of the patients used some other pharmacy?

A Yes.

Q What was your -- did -- from time to time did you ever check what inventory was available at -- for Subsys and Abstral at C&R Pharmacy?

A Yes, I did.

Q Tell the ladies and gentlemen of the jury why you would do that.

A Every time -- these medications are very specialized medications. Local pharmacies do not carry them. If I want to write a dosage, if the pharmacy do not have it, patients could not get it. You have to come back, switch medication. Other pharmacy, they couldn't get this drug. So, therefore, if there is already one in the company, we know -- for example, if patient was on 200 micrograms.

Q Of what medication?

A Let's say Abstral. So we have no other supplier for 200. [5827] We can write a 100, give it two at a time; therefore, the patient can fill the drug, use the same way. Instead of writing 200, later on found out they can't fill it, we had to change it again.

Q If you wrote a 200 micrograms of Abstral and it wasn't available at Walgreens or Rite-Aid and even if they came to C&R Pharmacy and you wrote it for 200, if the 200 is not available there, could they fill it?

A No, they could not.

Q If you had two 100s, could they just substitute that or would you have to write a new prescription?

A You have to write a new prescription.

Q So before you write the prescription you would need to know the availability, in some cases, what would be in the pharmacy.

A That's correct.

Q Any other reason you would check?

A Sometimes like switching; patient already on one or want to switch, rotate to a different one. And with the switching it's actually also free to the patient, to the insurance, so we do those. For example, if I have a patient for -- on two Subsys a day, 64 months, I may say: This not coming back. I'll give you one box of Subsys, 30 pill; give you one box of Abstral. You compare which one's better when you have a very severe breakthrough pain. Patient come back in a month, will say actually work better. Well, Subsys work better, we switch [5828] back. So by doing that we cut down their -- that month of dosage for one. It's a free voucher.

Q Did the availability of whatever medications may be in C&R Pharmacy ever have an effect on your clinical judgment as to what you should prescribe?

A No.

Q And why not?

A Well, the -- based on the availability, the decision is still based on the need of the patient. We know what drug the patient needs. But, however, in order to fill that drug, it had to be available. The drug had to be there for you to fill it.

Q And after the McConaghys took over the operation of C&R Pharmacy, what daily involvement, if any, did you have with the operation of the C&R Pharmacy?

A The agreement with McConaghy, they handle everything. That's in their agreement; although we pay for the employees. It's their decision to hire, to fire whoever, because we have no way of intervening, therefore everybody is theirs. And then - - there they hire, they make decision. And whenever the pharmacist is sick, they have coverage. So we don't have to take care of any of those.

Q Did you have any daily management or other involvement in C&R Pharmacy after McConaghy became involved?

A No. No.

\* \* \*

[5838] Q Do you have to explain --

A Yeah.

Q Excuse me?

A I'll make it simple. Dr. Kaye is anesthesiologist. I am at that time board certified in addiction medicine, so I was trying to basically tell the medical student and Dr. Kaye and Dr. Shah, there is

a difference between the way people handle addiction medicine versus pain practice. Addiction medicine based on the guideline, you should check patient's urine at every medication refill; monthly, biweekly or even weekly. That was based on the guideline. The current -- most current one published in 2013 say the same thing.

Now, in reality, I'm checking urine actually every three months. You saw many document. So I was telling them that was basically academic, the practice versus -- private practice is different because of the guideline difference. And I can't tell Dr. Kaye I have a board in addiction medicine so I basically say that was in general, in practice how people do in contrast with academic.

Q Have you ever failed to discharge a patient that you thought it was medically necessary to do for -- in order to maintain the patient for compensation?

A Never. If I don't think I can help that patient, I would terminate the physician-patient relationship. Many patient, I discharge them this way. Once I decide I can no longer help a [5839] patient, then I terminate the relationship.

Q Have you discharged patients in PPSA?

A Hundreds of them.

Q Do you know how many?

A A few years back, maybe two to 300.

Q You have seen during the course of this case some prescriptions that were blank in nature that bore a signature that looked like yours. Did you see those?

A I saw some prescriptions, yes.

Q Was that your signatures?

A I recognized some of them, yes.

Q And did you have any prescriptions in any area of your -- in a drawer in your office?

A Yes.

Q If you recall.

A Yeah. Those prescriptions showed -- there are different ways of signing it, so one of them was signed maybe 10 years ago. I changed the way I sign my prescription.

Q Just so you're not -- we're not being confused, you're just saying 10 years ago you had a different type of way of signing your name?

A That's correct.

Q And looking at those prescriptions, that way of signing existed 10 years ago?

A Well, maybe eight years. I don't remember when did I [5840] switch but it was a different way of signing this, yes.

Q So are you telling the jury that those -- those may have been that old since you signed them?

A Yes.

Q Did they have Peggy Holder's name on there, some of them?

A One set have Janice Bishop and Beverly Parker. Beverly Parker was working with us in 2008, I think.

Q And hadn't been since that time?

A Right.

Q Did you sign those and put them in a drawer?

A I signed those for emergency situations, not for billing, not -- only made for changing -- for example, a patient was prescribed Exalgo, for example, they couldn't find it, that medication, either insurance does not cover it, it need to be changed. However, if I'm out of town, that medication cannot be changed. Only Sharon Noland said she used it twice in three years.

Q Did you ever know -- have you ever seen any particular medication ever been signed by those -- have you ever seen it? Do you have any recollection of any medication ever been prescribed by one of those prescriptions?

A I don't.

Q So you don't know whether one of those prescriptions ever has been used?

A I don't. I don't know.

[5841] Q And if they had been used by Ms. Noland, you don't know what she may have -- the prescription may have been; Schedule II, III, IV, V; you don't know?

A That's correct. I don't know what's really used for.

Q You've seen prior authorization forms in this case, have you not?

A Yes, I have.

Q And have you seen some prior authorization forms that bore your signature that were not completely filled?

A I saw them.

Q Can you tell the ladies and gentlemen of the jury the circumstances surrounding those forms?

A Those preauthorization forms, we have -- I really don't know what's the significance of it because I don't know when the signatures were on them, and I thought was for facilitating people getting their medication. I saw one of the Duexis three months preauthorization. That's a patient assistance program. It wasn't even no choice. And that was also in one of the envelope, so I'm not sure which person put them in there and how they work. And it's not a prescription, it's just a form for paperwork.

Q As far as seeing patients -- on new patients when they came to your office, did you see new patients when they came to your office?

A Always.

[5842] Q Excuse me. Always. You mean always like every single time?

A Every single one of them in the 12 years.

Q For how long?

A 12 -- my last 12 years in PPSA, every single one.

Q And did you see patients that came on a repeat basis -- or a later basis?

A Whenever there's a need, I see them regardless of insurance.

Q Insurance plays no part in it?

A No, not at all.

Q And you've heard some talk about Blue Cross/Blue Shield patients. Did there -- did you have a practice where you would see those patients routinely?

A Every patient who comes to the clinic, if there's an issue, I need to see them. If their nerve testing need to be interpreted, I saw them, explained to them. And my finding is explained. I saw them, explained to them. I'm -- I was involved in every decision making, medications, procedures, because they are my patient so I'm involved in every decision making. Nurse report to them, I get updated, I agree or disagree. Not a single one I did not involve with their care.

Q We've heard the term PDMP. Can you tell the jury one more time what that means?

A Prescription monitoring program. It's a program. Every

\* \* \*



**APPENDIX P**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

WEDNESDAY, FEBRUARY 15, 2017

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DAY 26 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[5920] Q There was no request for this prescription to be given because this lady had cancer; is that right?

A That's correct.

Q And the prescription they were inquiring about was on what date?

A March 4th, 2013.

Q And Ruan's 129, the date is?

A March 4th, 2013.

Q Doctor, why did you come to this country?

MS. GRIFFIN: Objection, Your Honor. It was asked and answered on the very first part of the testimony.

THE COURT: Sustained.

BY MR. KNIZLEY:

Q How long have you been practicing medicine in this country?

A Together about 16 years; 16-17 years.

Q During the time frame that we've talked about regarding the allegations that have been made against you, have you ever prescribed any medication outside the normal course of medical practice?

A Never.

Q Have you ever wrote a prescription that wasn't for the legitimate medical purpose of your patient?

A Never.

Q Have you ever done anything that was motivated -- in your medical practice that was motivated by anything other than [5921] caring for your patients?

A Never.

MR. KNIZLEY: That's all.

THE COURT: All right, Ms. Griffin.

(A discussion was held off the record between counsel.)

THE COURT: Whenever you're ready, Ms. Griffin.

CROSS EXAMINATION

BY MS. GRIFFIN:

Q Now, you have gone over your testimony from yesterday and this morning with Mr. Knizley before you came in here yesterday and today; correct?

A I beg your pardon?

Q You've gone over your testimony, haven't you, with Mr. Knizley before beginning testifying yesterday?

A We discussed about it.

Q And you went over the questions; is that right?

A Some of them.

Q And you also went over what to expect on cross-examination, didn't you, with Mr. Knizley?

A Some of them.

Q And then you wrote things down on some index cards, didn't you?

A I wrote some patient age, years of the same. Basic information, yes.

Q So the answer to that question is yes, that you did write

\* \* \*

[6032] consulted a colleague who had someone who was a billing specialist conduct the training for this clinic? (Indicating.)

A That's correct.

Q Now, you were asked about this sentence before now. It's probably a good idea to lay eyes on everyone. Were you or were you not already doing that?

A I was doing that for years.

Q The last sentence. What did Mr. Bean say about these billing coverage issues?

A Hope this helps to begin to clarify this complex issue.

Q At least he considered that to be fairly complex, how you do this billing?

A That's correct.

Q And whatever way you billed when you saw patients, whether you -- however you billed or were compensated, was it in the best interest of your patients, whatever you did?

A Yes.

Q Was it your job -- did you oversee the billing aspect of your practice?

A No.

Q Was this something you knew about or were concerned about on a routine basis?

A There -- news is about this kind of event happening in Mobile. That's how Matthew Bean wanted to do something. We had the practice -- all the patients that came to see me,

\* \* \*

[6044] unsuccessfully often out in the community.

Q So would it be fair to say or describe the patients as very challenging patients?

A Yes, they are some of the most challenging I've seen, with some of the most advanced disease states that I have seen.

Q And how did you find the treatment that Dr. Ruan -- or the treatment plans and the course of treatment that Dr. Ruan employed in these cases?

A I found Dr. Ruan's treatment in many ways exemplary. The principles of pain medicine is that you want to minimize the opioids as much as possible by using other measures. That can include, at the beginning of the beginning, a good diagnostic workup so that the doctor knows what they are dealing with. So that can include, for example, as Dr. Ruan ordered, it may include Doppler to rule out blood clots, MRIs and other imaging studies of the different parts of the back, the neck, the mid back, the lower back, imaging of the different joints, nerve tests, quite a comprehensive history, especially the initial history and physical examination, a good diagnostic followup, advanced imaging on advanced diagnostic studies in many cases just to sort things out, and appropriate reach out to the community physicians, from primary care to orthopedics and neurosurgery, and then a treatment plan that was in many ways all-encompassing that aimed to minimize the opioids that are prescribed. So that ranged from, for example, adjusting a [6045] loose-fitting brace to minimize the back pain to prescribing a spectrum of nonopioid medications such as, for example, anti-depressants and nerve pain medications, performing a range of interventional procedures ranging from, for example, joint injections or muscle injections and back

injections and spinal injections, all in an effort to treat the combination pain that the patients are suffering from.

Close followups, close monitoring. When he discovered that the treatment is failing or the opioid plan is failing or if the doses are getting to be high, often he rotated out of whatever he was prescribing that was a controlled substance. So generally speaking, it was quite impressive and exemplary treatment of a patient that is rather challenging.

Q So you mentioned a lot of different topics. I'm just going to kind of grab onto a few of them. You mentioned the rotation of the opioids when it looked like the patients might not be getting the optimum benefit anymore? Did you mention that? Is that like when a patient becomes tolerant or it appears that the opioid is not working?

A Yes. Or if you want to cut down on the overall dose.

Q Okay. I believe dosage within this context is what they refer to as titration, when you're trying to work on the exact dose that may benefit the patient?

A That's correct.

Q Could you explain how a pain management physician uses the [6046] tolerance to the medication and rotation with titration and dosages?

A As we titrate up, let's say, a particular opiate molecule, let's say hydrocodone, which is like Vicodin. And if we find that after reasonable titration where, let's say, we're getting to a dosage of somewhere between 50 to 100 milligrams, where a patient was initially getting pain relief but now the molecule is

beginning to fail, there are a couple of different strategies there to manage that. In addition to doing everything else and optimizing the nonopioids, one of the options you have is to go up on the dose of existing medication, so go up on the hydrocodone or whatever else is being prescribed as an example. But what I found with Dr. Ruan is that, instead of doing that, he rotated out to another molecule, to another opioid, such as, for example, morphine or oxycodone or Duragesic or whatever it may be, where because of that rotation you're able to decrease the dose overall significantly. And that's something that I saw where at times I even said to myself why not just go up on the existing dose of what was working before? But the opioid rotation is definitely -- it told me that he really knows what he's doing in terms of the practice of medicine and in many ways he's providing advanced pain care and really keeping the doses in check as much as possible.

Q So is the opioid rotation and the dosages that you saw from [6047] these patient files, were they for a legitimate medical purpose?

A They absolutely were.

Q And were they within the usual course of professional practice to do it the way he did these?

A Yes, they were.

Q Now, with regard to the use of opioids with other medications, did you find evidence from the files that in addition to the opioids he worked in nonopioids as part of the treatment plan?

A Yes, I did.

Q And what is the benefit to the patient of doing so, or the need of the patient of doing so, from the charts you reviewed?

A The benefit to the patient is what we call -- it may sound like a geeky term -- but it's called multi-mechanistic analgesia because there are different types of pain, not just different degrees of the same type. And those different types of pain require a particular type of an analgesic to really hit it on the head and alleviate the pain.

So that ranges from medicines that attack different parts of the central nervous system, at the brain and spinal cord, or giving medicines that work on the joints and the periphery. So by attacking those different mechanisms of pain both in the periphery, let's say at the muscle and joints, as well as within the brain and other parts of the nervous system, [6048] you can cut down on the opioid and improve the quality of the pain relief. So you have the strategy of sticking with one mechanism where ultimately you run out from what that mechanism provides, but you can improve the quality of pain relief by being multi-mechanistic with the nonopioids, which he did quite impressively.

Q In addition to the use of the opioids with the nonopioids that you just described, did you also see where he worked in other efforts like interventional efforts to block pain or do other procedures?

A Yes, I did.

Q And how does that benefit -- within the context of the pain management clinic, how is that evidence of good treatment to the patient?



A That's evidence of somebody who is highly skilled, who is addressing the patient's problems head on. Medications work in our blood and they get circulated to different targets and provide pain relief. The advantage of interventional therapies -- and what I mean by that is injections to different parts of the body -- is that it treats the pain exactly where it needs to be treated. So they range from, let's say, cortisone shots in the hips or the knees to injections in the spine. But Dr. Ruan also engaged in more advanced interventional therapies; for example, many of us, for example, we may go up and up and up on the opioid molecule but what he [6049] opted to do for some patients is to encourage them to have a drug delivery system implanted, where you can cut down on the overall dosing that the patient gets on a 24-hour basis by a factor of 100 to one, 200 to one, or so. So that told me that he's getting advanced with patients and he's able to cut down on the medication needs through different interventions that get to the pain problem.

Q And with regard to those procedures, his use of procedures for these patients, was that for a legitimate medical purpose?

A Yes, because these patients had significant spine disease in particular as well as significant peripheral joint disease. And the practice of medicine is to not be overly simple. Maybe some of us are simple, and that's still within the practice of medicine. But Dr. Ruan's care was clearly more multi-modal and multi-disciplinary, where in many ways he was quite capable himself in being diverse in the way he treats the patient, and that was clearly in the higher end of the standard of care.

Q When you use the word multi-modal, is that when we've heard the word different modalities and he was multi-modal?

A Yes. For example, physical therapy injections and medications.

Q And those were for a legitimate medical purpose. Were they also within the ordinary course of a professional practice, medical practice?

A Yes, they definitely were.

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**APPENDIX Q**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

THURSDAY, FEBRUARY 16, 2017

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DAY 27 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[6128] were taking notes -- and explaining why it was, what it was in the file specifically that caught his attention and brought him to have his opinion that those were outside the usual course of professional practice.

Now, at times did Dr. Greenberg get confused about small matters?

Yes. He was on the stand for two days, two full days, answering questions for the United States,

meticulously going through those files and then being grilled on the small details from the files by defense counsel. Of course, he had some mistakes and he forgot some things. That does not mean that his opinions are not valid.

Not only that, his opinions were hardly refuted. Think about the defense experts that came on and talked about files. You had Dr. Warfield, you had Dr. Gudin, and you had Dr. Gharibo.

None of the defense experts went through any of the files with you. It was a very high level of: Nothing that was done was wrong, all the prescriptions were good, everything was in the usual course of professional practice.

The reason they didn't get into these was because you can't. You're going to have those case files. Please look through them, get in the weeds. Look at all those fraudulent examinations.

Look at all the things, all the inconsistent drug

\* \* \*

[6188] written books, she's published, she's on staff at Harvard Medical College, she's an endowed chair, she's an endowed professor there. Dr. Warfield had this to say: The issue is whether the doctor is actually practicing medicine, that's whether it's inside or outside the usual course of professional practice. Is medicine being practiced?

The example she gave was, imagine you're a doctor and you're at a cocktail party and someone comes up and says: Hey, I hear you're a doctor. Would you mind writing me a prescription for a Percocet? Sure. Not a problem. Here's the prescription.

That's not practicing medicine. But there are a lot of layers to what it means to practice medicine.

There's perfect care. There's what every doctor aspires to do. There's great care; may not be perfect. You may have a mistake here or there but nothing too big.

There's poor care. Okay. There's neglect care, even. And then there's even malpractice. That's what Dr. Warfield told us. All of that is within the usual course of medicine.

It's only when you step outside the practice of medicine or you're outside the usual course of professional practice, that's where the government has to get you. Was Dr. Couch no longer practicing medicine? Had he shed his white coat and decided to become a drug pusher, a drug dealer? [6189] That's the question in this case, not whether he committed malpractice, not whether he was negligent, not whether his records were perfect.

Was he practicing medicine?

Remember also the example that Dr. Warfield gave. Imagine a surgeon is performing surgery and leaves a sponge inside someone's chest. There is no doubt that that is malpractice but there's also no doubt that the surgeon is still practicing medicine. But the practice of medicine is a collaborative one. Doctors rely on nurses, doctors rely on nurse practitioners, doctors rely on medical assistants. Doctors rely on a host of professionals. And that's okay. There is no rule written anywhere that says a doctor must see his patient every single visit. Nothing. The government brought you experts who suggested otherwise. But remember on cross-examination: Were

any of them ever able to identify for you a single written national standard saying that the doctor must examine a patient every single time that the patient comes into a practice?

Mr. Bodnar during his closing said: Watch the videos and use your common sense; it doesn't look like any doctor's visit I've been to.

I disagree. Ask yourselves how many times you've been to a doctor's office and seen a nurse practitioner, primarily if not exclusively.

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**APPENDIX R**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

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CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

FRIDAY, FEBRUARY 17, 2017

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DAY 28 OF TRIAL BEFORE  
THE HONORABLE CALLIE V. S. GRANADE,  
UNITED STATES DISTRICT JUDGE, AND JURY

\* \* \*

[6330] violating section 1962(d) only if all of the following facts are proved beyond a reasonable doubt: First, two or more people agreed to try and accomplish an unlawful plan to engage in a pattern of racketeering activity; second, the defendant knowingly and willfully joined in the conspiracy; and, third, when the defendant joined in the agreement, the defendant had the specific intent either to personally participate in committing at least two other acts of racketeering (which in this case would be

acts violating the Controlled Substances Act as described herein, acts constituting mail fraud, or acts constituting wire fraud), or else to participate in the enterprise's affairs, knowing that other members of the conspiracy would commit at least two other acts of racketeering and intending to help them as part of a pattern of racketeering activity.

A person may be a conspirator even without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators.

If the defendant played only a minor part in the plan but had a general understanding of the unlawful purpose of the plan -- and willfully joined in the plan on at least one occasion -- that's sufficient for you to find the defendant guilty.

But simply being present at the scene of an event or merely associating with certain people and discussing common

\* \* \*

[6344] found at pages 15 and 16 above, also apply to these conspiracy charges.

Also as to count 15, the indictment identifies four means by which the defendants allegedly conspired to commit healthcare fraud. You may find a defendant guilty of this conspiracy if you conclude beyond a reasonable doubt that a defendant conspired to commit healthcare fraud by one or more of these four means, provided that you unanimously agree on which ones.

The government does not have to prove all four. But in order to convict on count 15, you have to agree



unanimously on which one or more of the four ways the government proved beyond a reasonable doubt.

Counts 16 and 17 charge Defendants Couch and Ruan with violating Title 21, United States Code, Section 371, which makes it a federal crime for anyone to conspire or agree with someone else to do something that, if actually carried out, would result in the substantive violation of the anti-kickback statute.

Specifically, the government alleges in count 16 that from in or about March 5, 2011, and continuing through in or about May 20, 2015, Defendants Couch and Ruan knowingly conspired with each other, with Michael Drobot (identified in the indictment by the initials M.D.), and with Christopher Manfuso and others to violate the anti-kickback statute, in

\* \* \*

[6349] instructions to you found at pages 15 and 16 about “conspiracy” also apply here.

The indictment charges that the defendants conspired to commit both mail and wire fraud. In other words, the defendants are charged with conspiring to commit two separate substantive offenses. The government does not have to prove that the defendant willfully conspired to commit both crimes. It is sufficient if the government proves beyond a reasonable doubt that the defendant willfully conspired to commit one or both of those crimes. But to return a verdict of guilty, you must all unanimously agree on which crime or crimes the defendant conspired to commit.

Count 20 charges Defendant Ruan with violating Title 18, United States Code, Section 1956(h), which

makes it a federal crime to conspire to engage in money laundering or transactions involving the proceeds of specified unlawful activity that violate Title 18, United States Code, Section 1957.

Specifically, count 20 charges that on or about March 5, 2011, Through in or about May 20, 2015, Defendant Ruan, aided and abetted by Christopher Manfuso and others, knowingly conspired with others to engage in monetary transactions by, through, and to a financial institution affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000. Such property is alleged to have been [6350] derived from the defendants' conspiracy to commit healthcare fraud, conspiracy to violate the anti-kickback statute, and conspiracy to distribute controlled substances.

The defendant can be found guilty of this crime only if all of the following facts are proved beyond a reasonable doubt: One, two or more people agreed to try to accomplish a common and unlawful plan to violate Title 18, United States Code, Section 1957; and, two, the defendant knew about the plan's unlawful purpose and voluntarily joined in it.

Again, my previous instructions to you about conspiracies also apply to this conspiracy charge.

Counts 21 and 22 charge Defendant Ruan with violating Title 18, United States Code, Section 1957, which makes it a federal crime for anyone to engage in certain kinds of financial transactions commonly known as money laundering.

Specifically, count 21 charges that on or about August 14, 2014, Defendant Ruan knowingly engaged and attempted to engage in a wire transfer in the

amount of \$124,355.87 from a State Bank & Trust account in the name of XLR Exotic Autos, LLC, to a JPMorgan Chase Bank account in Dallas, Texas, such funds having been derived from defendants' conspiracies to commit healthcare fraud, to violate the anti-kickback statute, and to distribute controlled substances.

Count 22 charges that on or about August 26, 2014, Defendant Ruan knowingly engaged and attempted to engage in a [6351] wire transfer in the amount of \$110,000 from a State Bank & Trust account in the name of XLR Exotic Autos, LLC, to a Comerica Bank account in San Diego, California, such funds having been derived from Defendants' conspiracies to commit healthcare fraud, to violate the anti-kickback statute, and to distribute controlled substances.

Excuse me.

The defendant can be found guilty of these offenses only if all of the following are proved beyond a reasonable doubt: One, the defendant knowingly engaged or attempted to engage in a monetary transaction; two, the defendant knew the transaction involved property or funds that were proceeds of some criminal activity; three, the property had a value of more than \$10,000; four, the property was in fact proceeds of the alleged unlawful activity alleged in the indictment; specifically, conspiracy to violate the Controlled Substances Act, conspiracy to commit healthcare fraud, and conspiracy to violate the anti-kickback statute; and, five, the defendant -- excuse me -- the transaction took place in the United States.

The term “monetary transaction” means the deposit, withdrawal, transfer, or exchange of funds or a monetary instrument by, through, or to a financial institution in a way that affects interstate commerce.

A financial institution means a bank.

The term “proceeds” means any property derived from or

\* \* \*

## APPENDIX S

Alabama PDMP Comparison SUBSYS 01/01/2011 to 05/31/2015			
RANK	PRESCRIBER NAME	NUMBER OF RXs WRITTEN	NUMBER OF UNITS PRESCRIBED
1	XIULU RUAN	2064	132,470
2	JOHN PATRICK COUCH	992	104,470
3	***	372	23,590
4	***	286	27,095
5	***	104	14,658
6	***	85	4,530
7	***	74	5,550
8	***	40	4,330
9	***	34	1,690
10	***	29	2,000

**GOVERNMENT EXHIBIT 24-3**  
ADMITTED IN EVIDENCE 1/6/17

## APPENDIX T

Alabama PDMP Comparison ABSTRAL 01/01/2011 to 05/31/2015			
RANK	PRESCRIBER NAME	NUMBER OF RXs WRITTEN	NUMBER OF UNITS PRESCRIBED
1	XIULU RUAN	1578	68,116
2	JOHN PATRICK COUCH	752	45,208
3	***	10	216
4	***	7	256
5	***	7	224
6	***	5	384
7	***	5	160
8	***	3	320
9	***	3	96
10	***	2	128

**GOVERNMENT EXHIBIT 24-4**  
ADMITTED IN EVIDENCE 1/6/17

**APPENDIX U**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

---

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

---

CASE No. CR15-00088

COURTROOM 2B

MOBILE, ALABAMA

THURSDAY, MAY 25, 2017

---

SENTENCING OF JOHN PATRICK COUCH, MD,  
BEFORE THE HONORABLE CALLIE V. S.  
GRANADE, SENIOR UNITED STATES DISTRICT  
JUDGE, AND JURY

\* \* \*

[12] patients. Prescribing drugs based on financial self-interest.

And again, we believe that the number or the percentage based on the evidence, that there is supportable evidence that it was much higher than just 10 percent of the drugs being prescribed illegally. That's giving almost 90 percent of the office being run as a legitimate practice, which we don't believe it was. But we throw that number out as that's the baseline,

Your Honor, that even if it's as low as only 10.6 percent, we're still talking about the top guideline range, which is level 38 here. And that's why we think it's appropriate and supportable by the evidence that was already presented at trial.

THE COURT: All right. From my recollection of the evidence at trial and from the information presented to me here, I do find that at the very least 10.6 percent of the prescriptions written for these particular substances were outside the course of professional practice, and therefore that level 38 is the appropriate level from which the guideline calculation should be made.

Counsel has objections to those that are on the record and will be there for appeal.

Now, what was the next issue you wanted to present?

MR. BODNAR: Your Honor, the United States would like to call Susannah Herkert to the stand.

THE COURT: All right. And what is this addressing?

\* \* \*

[37] receive these fentanyl drugs.

There was trial testimony by one of the employees who watched the people come and go. There was testimony about the number of patients that were seen. There was testimony by Bridgette Parker and Justin Palmer about 50 percent. And in fact, one of them said they thought it was more than 50 percent.

In connection with that, we have not included all of the drugs. These companies are entitled to full



restitution, and we did not include the other drugs. Many of those other drugs were prescribed by them because they made up the Holy Trinity that the Court has heard they were so fond of.

In connection with the presentation, the government does not concede that it's less than 50 percent, as Mr. Essig represented. We believe that they are fully supported, that they are actually less than what these companies requested initially, and that we can support them with the trial testimony.

They do not challenge, I understand, and we did not bring the representatives from the companies because they don't challenge the calculations of the numbers. They just challenge.

Now, one other thing, they weren't just convicted of drug counts. They were convicted of a number of fraud counts. And in connection with the prescribing of controlled [38] substances, specifically Abstral and Subsys, those drugs, the jury virtually concluded, were prescribed because those doctors had a financial interest in those drugs. And that's not for a medical purpose, a legitimate medical purpose.

So in connection with what we presented to the Court, in connection with the numbers presented by the various victims, we think that it is a reasonable calculation.

Further, we cited the cases at page 15 of our response, Government's Exhibit 642, that say if a precise restitution amount is unattainable, it is permissible for the Court to estimate the victims' loss when determining the amount of restitution owed.

We contend this is such a case, that we would be here for three months going through every single

particular victim file, and that this is a reasonable way to calculate it, and it is based on trial testimony and the findings of fraud as to the RICO count and as to the other fraudulent counts connected with these doctors.

THE COURT: All right. Well, I do recall the testimony from the trial of the estimate that 50 percent of the prescriptions written were not for legitimate medical purpose.

Now, the defense wants to discount that. But that is the only testimony that I recall about what percentage might have been the correct percentage. The defendants offer though alternate facts from which the Court can extrapolate these

\* \* \*

**APPENDIX V**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

---

No. 15-CR-00088

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

---

MAY 26, 2017

---

**JUDGMENT IN A CRIMINAL CASE****THE DEFENDANT:**

- ☐ pleaded guilty to count(s)
- ☐ pleaded nolo contendere to count(s) which was accepted by the court
- ☒ was found guilty on counts 1-4,8,9,11,12,15,16,17 & 19-22 of the Second Superseding Indictment on 2/23/2017, after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title &amp; Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 1962(d) RICO Conspiracy	05/20/2015	1
21 USC § 846 - Drug conspiracy	05/20/2015	2-4
21 USC § 841(a)(1) - Distribution of controlled substance	02/26/2015	8
21 USC § 841(a)(1) - Distribution of controlled substance	04/27/2015	9

21 USC § 841(a)(1) - Distribution of controlled substance	11/25/2014	11
21 USC § 841(a)(1) - Distribution of controlled substance	10/10/2012	12
21 USC § 841(a)(1) - Distribution of controlled substance	03/31/2014	14
18 USC § 1349 - Healthcare fraud conspiracy	05/20/2015	15
18 USC § 371 - Conspiracy to violate Anti-Kickback Statute	05/20/2015	16,17
18 USC § 1349 - Wire and mail fraud conspiracy	05/20/2015	19
18 USC § 1956(h) - Conspiracy to commit money laundering	05/20/2015	20
18 USC § 1957 - Money laundering	08/14/2014	21
18 USC § 1957 - Money laundering	09/26/2014	22

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant was found not guilty on count 10 of the Second Superseding Indictment.

☒ Count 18 of the Second Superseding Indictment is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

**May 26, 2017**

Date of Imposition of Judgment

**/s/ Callie V. S. Granade**

Signature of Judge

CALLIE V. S. GRANADE

**SENIOR UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**May 31, 2017**

Date

DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

**TWO FIFTY-TWO (252) MONTHS, said term consists of 240 months as to Counts 1, 2, 3, 4, 8, 9, 11, 12 & 19; 60 months as to Counts 16 & 17; and 120 months as to Counts 15, 20, 21 & 22. All said terms are to be served concurrently, except 12 months of the 120 month concurrent terms imposed as to Counts 15, 20, 21, & 22, are to be served consecutively to the other concurrent terms.**

☒ The Court makes the following recommendations to the Bureau of Prisons: that the defendant be imprisoned as close to Atlanta, Georgia, as possible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at ☐ a.m. ☐ p.m. on  
☐ as notified by the United States Marshal

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **FOUR (4) years, said term consists of 3 years on Counts 1, 2, 4, 8, 9, 11, 12, 15, 16, 17 & 19-22, and 4 years as to Count 3; all such terms are to run concurrently.**

☒ Special Conditions:

1) The defendant shall submit to periodic urine surveillance and/or breath, saliva, and skin tests for the detection of drug and/or alcohol abuse as directed by the Probation Office. Defendant may incur costs associated with such detection efforts based upon ability to pay as determined by the Probation Office, and availability of any third-party payments.

2) The defendant shall participate in an assessment or program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency, or abuse as instructed and as deemed necessary by the Probation Office. Defendant may incur costs associated with such drug/alcohol detection and treatment based upon ability to pay as determined by the Probation Office, and availability of any third-party payments.

3) Defendant shall participate in a mental health evaluation and comply with any treatment consistent with the findings of said evaluation as recommended by the Probation Office.

4) The Defendant shall submit his person, house, residence, vehicle(s), papers, computer(s) (as defined by 18 U.S.C., § 1030(e)(1)), or other electronic communication or data storage devices or media, business or place of employment and any other property under the defendant's control, to a search conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon a reasonable suspicion of contraband, or evidence of violation of condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

5) The defendant is prohibited from making major purchases, incurring new credit charges, or opening additional lines of credit without the approval of the Probation Officer, until such time as the financial obligations imposed by this court have been satisfied in full.

6) The defendant shall provide the Probation Office access to any requested financial information.

7) The defendant shall make restitution as set forth on Sheet 5, Parts A & B of this Judgment.

**For offenses committed on or after September 13, 1994:** The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall

submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

**The defendant shall not commit another federal, state or local crime.**

**The defendant shall not illegally possess a controlled substance.**

**The defendant shall comply with the standard conditions that have been adopted by this court.**

**The defendant shall also comply with the additional conditions on the attached page.**

See Page 4 for the  
"STANDARD CONDITIONS OF SUPERVISION"



DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### **STANDARD CONDITIONS OF SUPERVISION**

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. the defendant shall cooperate, as directed by the probation officer, in the collection of DNA, if applicable, under the provisions of 18 U.S.C. §§ 3563(a)(9) and 3583(d) for those defendants convicted of qualifying offenses.

DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

<b>TOTALS</b>	<b><u>Assessment</u></b>	<b><u>Fine</u></b>	<b><u>Restitution</u></b>
	\$1,500.00		\$15,239,369.93

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

Restitution of \$12,460,167.44 to:

BCBS OF ALABAMA C/O CINDY MCKENZIE NETWORK INTEGRITY OPERATION MA 450 RIVERCHASE PARKWAY EAST BIRMINGHAM, AL 35244 \$4,049,320.37	DEFENSE HEALTH AGENCY C/O PATRICIA MCCLELLEN HEALTH CARE FRAUD SPECIALIST 16401 EAST CENTRETECH PARKWAY AURORA, CA 80011-9066 \$3,549,788.40
MEDICARE OFFICE OF FINANCIAL MANAGEMENT PARTS A & B MAILSTOP: N3-21-06 7500 SECURITY BLVD BALTIMORE, MD 21244 \$1,365,420.67	MEDICARE OFFICE OF FINANCIAL MANAGEMENT PART D MAILSTOP: N3-21-06 7500 SECURITY BLVD BALTIMORE, MD 21244 \$3,495,638.00

Restitution of \$2,779,202.49, jointly and severally with co-defendant Xiulu Ruan (1:15-cr-00088-2), to:

DEFENSE HEALTH AGENCY C/O PATRICIA MCCLELLEN HEALTH CARE FRAUD SPECIALIST 16401 EAST CENTRETECH PARKWAY AURORA, CA 80011-9066 \$1,083,273.49	UNITED HEALTH GROUP C/O DOUG MORE ASSOCIATE DIRECTOR P.O. BOX 9472 MINNEAPOLIS, MN 55440-6472 \$1,695,929.00
---	---

☐ If applicable, restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Page 6 may be subject to penalties for default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☒ Lump sum payment of \$1,500.00 in special assessments and \$15,239,369.93 in restitution is due immediately, balance due not later than \_\_\_\_\_, or

☒ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with C, D, or F below); or

C ☐ Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$\_\_\_\_\_ over a period of (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after the date of this judgment; or

D ☐ Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$\_\_\_\_\_ over a period of (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

**The special assessment of \$1,500.00 for Counts 1, 2, 3, 4, 8, 9, 11, 12, 15, 16, 17, 19, 20, 21 and 22 and restitution are due immediately and payable in full, and are to be paid through the Clerk, U.S. District Court. Payment of restitution to the victims shall be on a pro rata basis. If full restitution is not immediately paid, any amount owing during a period of incarceration shall be subject to payment through the Bureau of Prison's Inmate Financial Responsibility Program. In the event that the defendant is not eligible to participate in that program, the defendant is to make minimum monthly payments of \$25.00 while incarcerated. As a special condition of supervised release, the Probation Office shall pursue collection of any balance remaining at the time of release in installments to commence no later than 30 days after the date**

**of release. If restitution is to be paid in installments, the court orders that the defendant make at least minimum monthly payments in the amount of \$250.00. No interest is to accrue on this debt. The defendant is ordered to notify the Court of any material change in his ability to pay restitution. The Probation Office shall request the court to amend any payment schedule, if appropriate.**

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Restitution in the amount of \$2,779,202.49 is to be paid jointly and severally with co-defendant John Patrick Couch, MD (1:15-cr-00088-001)

☒ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit to the United States the defendant's interest in the property as set forth in the Preliminary Order of Forfeiture (Doc. 505) and the Order for Interlocutory Sale (Doc. 587).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**APPENDIX W**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

---

No. 15-CR-00088

UNITED STATES OF AMERICA,

v.

JOHN PATRICK COUCH, M.D., AND XIULU RUAN, M.D.,

*Defendants.*

---

JULY 14, 2021

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**AMENDED JUDGMENT IN A CRIMINAL CASE**

**Reason for Amendment:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Correction of sentence on remand (18 U.S.C. 3742(f)(1) and (2)) | <input type="checkbox"/> Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  |
| <input type="checkbox"/> Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P.35(b))       | <input type="checkbox"/> Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))                        |
| <input type="checkbox"/> Correction of Sentence by Sentencing Court (Fed.R.Crim.P.36)               | <input type="checkbox"/> Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))       |
| <input checked="" type="checkbox"/> Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)   | <input type="checkbox"/> Direct Motion to District Court Pursuant <input type="checkbox"/> 28 U.S.C. § 2255 or <input type="checkbox"/> 18 U.S.C. § 3559(c)(7) |

**THE DEFENDANT:**

- ☐ pleaded guilty to count(s)
- ☐ pleaded nolo contendere to count(s) which was accepted by the court

☒ was found guilty on counts 1-4,8,9,11,12,15,16,17 & 19-22 of the Superseding Indictment, after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title &amp; Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 1962(d) RICO Conspiracy	05/20/2015	1
21 USC § 846 - Drug conspiracy	05/20/2015	2-4
21 USC § 841(a)(1) - Distribution of controlled substance	02/26/2015	8
21 USC § 841(a)(1) - Distribution of controlled substance	04/27/2015	9
21 USC § 841(a)(1) - Distribution of controlled substance	11/25/2014	11
21 USC § 841(a)(1) - Distribution of controlled substance	10/10/2012	12
18 USC § 1349 - Healthcare fraud conspiracy	05/20/2015	15
18 USC § 371 - Conspiracy to violate Anti-Kickback Statute	05/20/2015	17
18 USC § 1349 - Wire and mail fraud conspiracy	05/20/2015	19
18 USC § 1956(h) - Conspiracy to commit money laundering	05/20/2015	20
18 USC § 1957 - Money laundering	08/14/2014	21
18 USC § 1957 - Money laundering	09/26/2014	22

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant was found not guilty on count 10 of the Second Superseding Indictment.

☒ Counts 16 & 18 are dismissed: \*Conviction as to Count 16 was vacated by the Eleventh Circuit Court of Appeals on 7/10/20; Count 18 was dismissed on motion of the United States at trial.

It is ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

**July 14, 2021**

Date of Imposition of Judgment

**/s/ Callie V. S. Granade**

Signature of Judge

CALLIE V. S. GRANADE

**SENIOR UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**July 14, 2021**

Date



DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

**TWO HUNDRED FIFTY-TWO (252) MONTHS, said term consists of 240 months as to Counts 1, 2, 3, 4, 8, 9, 11, 12, & 19; 60 months as to Count 17; and 120 months as to Counts 15, 20, 21 & 22. All said terms are to be served concurrently, except 12 months of the 120 month concurrent terms imposed as to Counts 15, 20, 21, & 22, are to be served consecutively to the other concurrent terms.**

☒ The Court makes the following recommendations to the Bureau of Prisons: that the defendant be imprisoned as close to Atlanta, Georgia, as possible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at ☐ a.m. ☐ p.m. on  
☐ as notified by the United States Marshal

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: XIULU RUAN, MD  
CASE NUMBER: 1:15-CR-00088-002

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **FOUR (4) years, said term consists of 3 years on Counts 1, 2, 4, 8, 9, 11, 12, 15, 17 & 19-22, and 4 years as to Count 3; all such terms are to run concurrently.**

☒ Special Conditions:

1) The defendant shall submit to periodic urine surveillance and/or breath, saliva, and skin tests for the detection of drug and/or alcohol abuse as directed by the Probation Office. Defendant may incur costs associated with such detection efforts based upon ability to pay as determined by the Probation Office, and availability of any third-party payments.

2) The defendant shall participate in an assessment or program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency, or abuse as instructed and as deemed necessary by the Probation Office. Defendant may incur costs associated with such drug/alcohol detection and treatment based upon ability to pay as determined by the Probation Office, and availability of any third-party payments.

3) Defendant shall participate in a mental health evaluation and comply with any treatment consistent with the findings of said evaluation as recommended by the Probation Office.

4) The Defendant shall submit his person, house, residence, vehicle(s), papers, computer(s) (as defined by 18 U.S.C., § 1030(e)(1)), or other electronic communication or data storage devices or media, business or place of employment and any other property under the defendant's control, to a search conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon a reasonable suspicion of contraband, or evidence of violation of condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

5) The defendant is prohibited from making major purchases, incurring new credit charges, or opening additional lines of credit without the approval of the Probation Officer, until such time as the financial obligations imposed by this court have been satisfied in full.

6) The defendant shall provide the Probation Office access to any requested financial information.

7) The defendant shall make restitution as set forth on Sheet 5, Parts A & B of this Judgment.

**For offenses committed on or after September 13, 1994:** The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall

submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

**The defendant shall not commit another federal, state or local crime.**

**The defendant shall not illegally possess a controlled substance.**

**The defendant shall comply with the standard conditions that have been adopted by this court.**

**The defendant shall also comply with the additional conditions on the attached page.**

See Page 4 for the  
"STANDARD CONDITIONS OF SUPERVISION"

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### **STANDARD CONDITIONS OF SUPERVISION**

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
14. the defendant shall cooperate, as directed by the probation officer, in the collection of DNA, if applicable, under the provisions of 18 U.S.C. §§ 3563(a)(9) and 3583(d) for those defendants convicted of qualifying offenses.

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### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA</u> <u>Assessment*</u>	<u>JVTA</u> <u>Assessment**</u>
TOTALS	\$1,400.00	\$15,239,369.93			

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

Restitution of \$12,460,167.44 to:

BCBS OF ALABAMA C/O CINDY MCKENZIE NETWORK INTEGRITY OPERATION MA 450 RIVERCHASE PARKWAY EAST BIRMINGHAM, AL 35244 \$4,049,320.37	DEFENSE HEALTH AGENCY C/O PATRICIA MCCLELLEN HEALTH CARE FRAUD SPECIALIST 16401 EAST CENTRETECH PARKWAY AURORA, CA 80011-9066 \$3,549,788.40
MEDICARE OFFICE OF FINANCIAL MANAGEMENT PARTS A & B MAILSTOP: N3-21-06 7500 SECURITY BLVD BALTIMORE, MD 21244 \$1,365,420.67	MEDICARE OFFICE OF FINANCIAL MANAGEMENT PART D MAILSTOP: N3-21-06 7500 SECURITY BLVD BALTIMORE, MD 21244 \$3,495,638.00

Restitution of \$2,779,202.49, jointly and severally with co-defendant

\*John Patrick Couch (1:15-cr-00088-1), to::

DEFENSE HEALTH AGENCY C/O PATRICIA MCCLELLEN HEALTH CARE FRAUD SPECIALIST 16401 EAST CENTRETECH PARKWAY AURORA, CA 80011-9066 \$1,083,273.49	UNITED HEALTH GROUP C/O DOUG MORE ASSOCIATE DIRECTOR P.O. BOX 9472 MINNEAPOLIS, MN 55440-6472 \$1,695,929.00
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☐ Restitution amount ordered pursuant to plea agreement  
\$\_\_\_\_\_

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Page 6 may be subject to penalties for default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- ☐ the interest requirement is waived for the ☐ fine ☒ restitution  
☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☒ Lump sum payment of \$1,400.00 in special assessments and \$15,239,369.93 in restitution is due immediately, balance due not later than \_\_\_\_\_, or

☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with C, D, or F below); or

C ☐ Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$\_\_\_\_\_ over a period of (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after the date of this judgment; or

D ☐ Payment in equal \_\_\_\_\_ (*e.g., weekly, monthly, quarterly*) installments of \$\_\_\_\_\_ over a period of (*e.g., months or years*), to commence \_\_\_\_\_ (*e.g., 30 or 60 days*) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within (*e.g., 30 or 60 days*) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

**The special assessment of \$1,500.00 for Counts 1, 2, 3, 4, 8, 9, 11, 12, 15, 16, 17, 19, 20, 21 and 22 and restitution are due immediately and payable in full, and are to be paid through the Clerk, U.S. District Court. Payment of restitution to the victims shall be on a pro rata basis. If full restitution is not immediately paid, any amount owing during a period of incarceration shall be subject to payment through the Bureau of Prison's Inmate Financial Responsibility Program. In the event that the defendant is not eligible to participate in that program, the defendant is to make minimum monthly payments of \$25.00 while incarcerated. As a special condition of supervised release, the Probation Office shall pursue collection of any balance remaining at the time of release in installments to commence no later than 30 days after the date**

**of release. If restitution is to be paid in installments, the court orders that the defendant make at least minimum monthly payments in the amount of \$250.00. No interest is to accrue on this debt. The defendant is ordered to notify the Court of any material change in his ability to pay restitution. The Probation Office shall request the court to amend any payment schedule, if appropriate.**

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Restitution in the amount of \$2,779,202.49 is to be paid jointly and severally with co-defendant John Patrick Couch, MD (1:15-cr-00088-001)

☒ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit to the United States the defendant's interest in the property as set forth in the Preliminary Order of Forfeiture (Doc. 505) and the Order for Interlocutory Sale (Doc. 587).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal,



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(5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.