

No. _____

21-6392 ORIGINAL

In The

Supreme Court of the United States

Janet Berry

Petitioner,

v.

William Paul Nichols et al

Respondents,

On Petition For Writ of Certiorari To The United States Court of Appeals for the Sixth Circuit Court of Appeal (19-2209)

PETITION FOR A WRIT OF CERTIORARI

In Forma Pauperis

Janet Berry

8 West 7th Street

Apt. 307

Monroe, MI 48161

Supreme Court, U.S.
FILED

NOV 20 2021

OFFICE OF THE CLERK

QUESTIONS PRESENTED

1. Where a peril is created, by the government accompanied with private entities acting as state actors under the color of law , via an invalid warrantless search and seizure of a patient's possessory interest in their digital medical records and personal identifier, in a state other than the state described in particularity in the search warrant, and where a legitimate expectation of privacy existed, and the peril caused a constitutional 4th amendment and a physical injury, does that petitioner has standing for a cause of action for a 42 U.S.C § 1983 remedy under a Monell and /or a Bivens Claim ?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	ii
TABLE OF CONTENTS.....	iii
LISTS OF PARTIES	vii
TABLE OF AUTHORITIES.....	xii
OPINIONS BELOW.....	P1
JURISDICTION	P2
CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE	P3
I. STATEMENT FOF THE CASE	
A. Facts Giving Rise To This Case.....	P3
B. The State Court Proceedings.....	P24
C. The District Court Proceedings.....	P24
D. The Appellate Court Proceedings.....	P24
II. REASONS WHY CERTIORARI SHOULD BE GRANTED	P26
1. Illegal Search and Seizure by Agents of the Government.....	P29
III. REVIEW IS WARRANTED	P30
1. Unreasonable Illegal Search and Seizure	P30
2. Standing.....	P32
3. Injury in Fact : Battered Pain Syndrome.....	P32
4. Stroke.....	P32
5. Causation and Redressability.....	P33

6. Statutory and Prudential Standing.....	P37
7. Malice.....	P39
 CONCLUSION.....	P40
CERTIFICATE OF COMPLIANCE.....	P41
CERTIFICATE OF SERVICE.....	P41

INDEX TO APPENDICES

APPENDIX A: Decision of the United States Court of Appeals for the Sixth Circuit (May 24, 2021)	A2
APPENDIX B: Order Decision of the United States Court of Appeals for the Sixth Circuit Denying Rehearing ((May 24, 2021. A135.....	A6
APPENDIX C: Decision of District Court	
ORDER GRANTING DEFENDANTS' MOTION TO CONSOLIDATE CASES ¹ [#16] AND SETTING DATES.....	A7
APPENDIX D	
OPINION AND ORDER REGARDING VARIOUS MOTIONS	A12
<u>APPENDIX E</u>	
ORDER DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION TO ENJOIN STATE AND FEDERAL COURT FILINGS BY PLAINTIFFS.....	A32
APPENDIX F	
<u>wpsites.maine.edu/mlipa/2021/11/15/predicting-drug-diversion-the-use-of-data- analytics-in-prescription-drug-monitoring/</u>	A36
 CONSTITUTIONAL PROVISIONS AND	
STATUTORY	A52

LIST OF PARTIES

JANET BERRY, Pro Se

V.

MONROE COUNTY CHIEF PROSECUTING ATTORNEY WILLIAM PAUL NICHOLS,
BLUE CROSS BLUE SHIELD OF MICHIGAN FOUNDATION (BCBSMF) –ID No. 800801281,
BLUE CROSS BLUE SHIELD OF MICHIGAN (BCBSM)—ID No. 800801281,
BLUE CROSS COMPLETE OF MICHIGAN (BCCM),
BLUE CARE NETWORK OF MICHIGAN (BCNM)—ID No.800883794, BLUECAID OF MICHIGAN (BCM)—Id No.800891749
BLUE CROSS BLUE SHIELD OF MICHIGAN MUTUAL INSURANCE COMPANY
BLUE CROSS BLUE SHIELD ASSOCIATION
I-PATIENTCARE INC,
MANTIS (MONROE AREA NARCOTIC TEAM INVESTIGATION SERVICE)
LT. MARC MOORE AND OTHERS,
DEA DIVERSION INVESTIGATOR BRIAN BISHOP
DEA TASK FORCE OFFICER CHRISTINE HICKS
DEA ADMINISTRATIVE JUDGE JOHN J MULRONEY AT US DISTRICT COURT IN DETROIT, MICHIGAN
FIRST MERCHANTS BANK, fka Monroe Bank & Trust
SUSAN MEHREGAN
THOMAS SCOTT
FORMER DEA TASK FORCE OFFICER/MONROE COUNTY POLICE DEPARTMENT OFFICER SHAWN KOTCH
BLUE CROSS BLUE SHIELD INVESTIGATOR JAMES STEWART, AKA JAMES HOWELL
MANTIS DETECTIVE ROBERT BLAIR
MANTIS DETECTIVE BRENT CATHEY
MANTIS DETECTIVE JON LASOTA AND OTHERS
MANTIS , MCSD DETECTIVE SEAN STREET
MANTIS ,MCSD, VICE UNIT DET. MIKE MCLAIN
MANTIS, MONROE POLICE DEPARTMENT (“MPD”)
MONROE COUNTY MAGISTRATE TINA TODD
MONROE COUNTY MAGISTRATE JESSICA CHAFFIN
MONROE COUNTY JUDGE JACK VITALE
MONROE COUNTY JUDGE DANIEL WHITE
BLUE CROSS BLUE SHIELD PHYSICIAN MEDICAL CONSULTANT,

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BLUE CROSS BLUE SHIELD PHYSICIAN CONSULTANT ALAN J
ROBERTSON MD
BLUE CROSS BLUE SHIELD UTILIZATION REVIEW DIANE SILAS
BLUE CROSS BLUE SHIELD MANAGER OF CLINICAL PHARMACY FRAUD,
WASTE AND ABUSE PROGRAM, JIM GALLAGHER
MONROE CITY POLICE DEPARTMENT VICE UNIT SGT DEREK LINDSAY
MONROE CITY POLICE DEPARTMENT VICE UNIT OFFICER AARON
OETJENS
MONROE CITY POLICE DEPARTMENT VICE UNIT OFFICER MIKE
MERKLE
MICHIGAN STATE POLICE DETECTIVE SPROUL
BLUE CROSS BLUE SHIELD MANAGER BRIAN ZAZADNY
MICHIGAN STATE POLICE TROOPER WILLIAM McMULLEN
MONROE CITY POLICE CHIEF CHARLES F. Mc CORMICK IV
MONROE CITY POLICE DEPARTMENT CORPORAL DONALD BRADY
MONROE CITY POLICE DEPARTMENT SERGANT CHRIS MILLER
MONROE COUNTY SHERIFF OFFICER DETECTIVE MIKE MCCLAIN
MANTIS CPL ADAM ZIMMERMAN
DEA WILLIAM CHAMULAK
DEA TOM FARRELL
MANTIS, MONROE COUNTY SHERIFF'S DEPARTMENT ("MCSD"), SCOTT
BEARD
DEA TASK FORCE OFFICER MIKE GUZOWSKI
DEA TASK FORCE OFFICER TIM GATES
MANTIS TASK FORCE OFFICER SARAH BUCIAK
ASSISTANT MONROE PROSECUTOR ALLISON ARNOLD
ASSISTANT MONROE PROSECUTOR JEFFREY YORKEY
CHIEF ASSISTANT PROSECUTOR MICHAEL G ROEHRIG
MONROE COUNTY SHERIFF'S DEPARTMENT DALE MALONE
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WITNESS, LEON PEDELL MD
CARL CHRISTENSEN MD, PH.D
MICHIGAN BUREAU OF PROFESSIONAL LICENSING PHARMACIST EXPERT
WITNESS, VAUGHN HAFNER, R.PH.
MICHIGAN BUREAU OF PROFESSIONAL LICENSING, KEEPER OF THE
RECORDS, DINA YOUNG
MICHIGAN ATTORNEY GENERAL BILL SCHUETTE
MICHIGAN ASSISTANT ATTORNEY GENERAL JENNIFER FRITZGERALD
MICHIGAN ASSISTANT ATTORNEY GENERAL TIMOTHY C. ERICKSON
MICHIGAN ASSISTANT ATTORNEY GENERAL M CATHERINE WASKIEWICZ
ADMINISTRATIVE LAW JUDGE, MICHAEL J ST. JOHN, MICHIGAN
ADMINISTRATIVE HEARING SYSTEM. 611 WEST OTTAWA. LANSING, MI
48933

MICHIGAN AUTOMATED PRESCRIPTION SYSTEM , HALEY WINANS,
UNITED STATES ATTORNEY MATTHEW SCHNEIDER
CHIEF, HEALTH CARE FRAUD UNIT, ASSISTANT UNITED STATES
ATTORNEY, WAYNE F. PRATT
ASSISTANT UNITED STATES ATTORNEY, BRANDY R. MCMILLION
JOHN(S) DOE(S), NAMES BEING FICTITIOUS AND UNKNOWN TO THE
PLAINTIFF, BEING ALL OTHER PARTICIPATING UNDERCOVER
DETECTIVE(S), INVESTIGATOR(S), AND LAW ENFORCEMENT OFFICER(S),
IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, JOINTLY, AND
SEVERALLY
RAY KISONAS
KIM GADEKE
MICHAEL ZSENYUK
MICHAEL HENDRICKS , HHS OIG

LIST OF RELATED PROCEEDINGS

Tracy Claire Micks -Harm, et al v. William Paul Nichols, et al. (Consolidated: 19-2173, 19-2182, 19-2207, 19-2209, 19-2226, 19-2227, 19-2228, and 19-2237). U.S. Court of Appeals, FOR THE SIXTH CIRCUIT. Judgement for rehearing entered JUNE 30, 2021.

Berry v. Nichols, 19-10648 , E.D Michigan. 2019

Blakesley v. Blue Cross, 19-10295, E.D Michigan. 2019

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Bureau of Professional Licensing v Dr. Lesly Pompy, Michigan Office of Administrative Hearings and Rules Case No. 43-16-143670.....

19-10639, Clark v. Nichols; E.D Michigan. 2019

18-13639, Helm v. Arnold; E.D Michigan. 2019

18-13647, Helm v. Nichols; E.D Michigan. 2019

19-10125, Cook v. William; E.D Michigan. 2019

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(14,15,16)19-10785, Drummonds v. Nichols, E.D Michigan. 2019

19-10990, Jennifer v. Nichols, E.D Michigan. 2019

19-10663, Johnson v. Nichols, E.D Michigan. 2019

19-10661, Knierim v. Nichols, E.D Michigan. 2019

19-10841, Smallwood v. Nichols;

19-10995, Smith v. Nichols; E.D Michigan. 2019

19-10984, Zureki v. Nichols; E.D Michigan. 2019

Stacey Simeon Hall v. City of Monroe Police Officer R. Parese et al. 18-10877 (E.D. Mich.) (2028) (Retaliation against the process server, Mr. Stacey Hall)

Hall v. Goodnough, Case number 04-70009 (E.D. Mich. Jun. 27, 2005)

Lesly Pompy, M.D., v. Drug Enforcement Administration. Case 19-4090. U.S. Court of Appeals, FOR THE SIXTH CIRCUIT. (2019)

Lesly Pompy v. MBT Financial Corp., Case 2:19-cv-10384-DML-SDD. U.S. District Court, Eastern District of Michigan, Southern Division.

Monroe County Prosecutor William P. Nichols (State of Michigan ex rel. William P. Nichols, Monroe County Prosecutor, v. \$27,814.00, et al., Defendants, and Lesly Pompy, M.D., Claimant, and Interventional Pain Management Associates, P.C., et al., Intervening Third-Party Claimants, Hon. Daniel S. White, Case No. 16-139517-CF. Judgement entered 03/18/2018.

MATTER of LESLY POMPY, M.D., License No. 43-01-058720, and File No. 43-16-143670)... 19-No. 19-10649, Mills v. Nichols

MOAHR Docket No. 19-00470. Case No.: 1800281. ALJ: ERICK WILLIAMS

Neil Anand, Lesly Pompy as Intervenor v. Independence Blue cross. (CASE NO. 20-6246-CFK) (E.D. Pa 2020).

Neil Anand, et al v. U.S. Department of Health and Human Services et al. (Case No 1: 21-01635 (D.C (2021)).....

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Pompy v First Merchant Bank, fka Monroe Bank and Trust; Susan Mehregan, et al , No.20-2259. (6th Cir. C. A.). Jan, 21, 2021 Final Order.

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In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406, N.D. Ala. Master File No. 2:13-cv-20000-RDP (the “Settlement”). 308 F. Supp. 1241 (N.D. Ala. 2018)

2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16.

Section IV

United States v. First Merchants Bank, 1:19-cv-02365-JPH-MPB (S.D. Ind.) (2019)

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City of Canton v. Harris	
489 U.S. 378, 109 S. Ct. 1197 (1989).....	P12, 37
Bivens v. Six Unknown Named Agents,	
403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971)	P1
<i>DeShaney v. Winnebago</i>	
489 U.S. 189 (1989).....	P31
Carpenter v. United States	
138 S. Ct. 2206, 2223 (2018).....	P8
Franks v. Delaware	
438 U.S. 154.....	P10
Groh v. Ramirez,	
540 U.S. 551, 557 (2004).....	P11
Horton v. California,	
496 U.S. 128, 140(1990).....	P11
Malik v. City of New York.	
(20-1969-cv) U.S Court of Appeals For the Second Circuit	P6
Monell v. Department of Soc. Svcs.,	
436 U.S. 658 (1978).....	P1, 37
Riley v. California	
134 S. Ct. 2473 (2014).....	P14

29 Tumey v. Ohio

273U.S 510 (1927).....P2

United States v. First Merchants Bank

1:19-cv-02365 (S.D. Ind.) (2019).....P12

FEDERAL STATUTES

Sherman Antitrust Act.P1

Controlled Substance Act § 802 (56) (c)P2

21 U.S.C. 841.....P

42 U.S.C § 1983.....P1

42 U.S.C. § 1985(3).....P4

STATE STATUTES

MCL 780.655.....P20

FEDERAL RULES

STATE RULES

The Michigan Health Endowment Fund, or the Health Fund for short, was created
through Public Act 4 of 2013.....P6

Federation of State Medical Boards- Model Policy on DATA 2000 and Treatment of Opioid Addiction in the Medical Office of April 2013.....P25

Rule 3:5-1 of the “RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY.”P15

OTHER

David M. Cutler, Harvard University: Reducing Administrative Cost in U.S Health Care. The Hamilton Project. Brookings Institute. March 2020.....P20

https://end-overdose-epidemic.org/wp-content/uploads/2021/09/AMA-2021-Overdose-Epidemic-Report_92021.pdf. 10/03/2021.....P2

<https://detroitsocialist.com/dsa-fights-to-remove-insurance-ceo-from-whitmer-transition-team-64588b045799>.....P25

<https://www.metrotimes.com/news-hits/archives/2019/03/08/bernie-sanders-criticizes-blue-cross-ceo-over-19m-pay>.....P6

<https://www.freep.com/story/news/local/michigan/2019/01/08/michigan-lara-director-orlene-hawks-married-lobbyist-marijuana/2499886002/>.....P14

<https://www.freep.com/story/money/business/2019/03/08/ceo-blue-cross-blue-shield-michigan/3071484002/>.....P14

<https://www.freep.com/story/money/business/2019/03/01/blue-cross-blue-shield-michigan-daniel-loepp/3028558002/?fbclid=IwAR0eEqqnSg6-5WVBv473MEUFXTT3ERM3V4J8014LJZELPYhwI7BaV5zPUsY>.....P14

STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget

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P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT NO. 190000000755

THE STATE OF MICHIGAN and BCBSM..... P25

wpsites.maine.edu/mlipa/2021/11/15/Predicting-drug-diversion-the-use-of-data-analytics-in-prescription-drug-monitoring/.....P8

How drug warriors made the “opioid epidemic deadlier. Sullum – Chicago – Sun-

Times.https://Chicago.suntimes.com/columnists/2021/7/28/22597967.....P30

OPINIONS BELOW

Petitioner Janet Berry moves pro se, from a Final Order of Reconsideration from the Sixth Circuit Court of Appeals, dated June 30, 2021¹. On May 24, 2021, the United States Court of Appeals for the Sixth Circuit improperly affirmed. Predatory anticompetitive strategies for market dominance have been litigated for Sherman anti-trust violation, and a settled for \$2.7 against BCBSMMIC ³. In the aggregate, BCBSMMIC, along with other franchisees of BCBSA (Blue Cross Blue Shield Association), substantially interfered with the insurance premium for health care.

A pretextual search and seizure occurred twice on 09/26/2016⁷ after the petitioner's doctor was targeted in November 2015. The opinion of the United States Court of Appeals appear at Appendix A and Appendix B and are not published. The opinions of the United States district court, are unpublished, and appear at Appendix C, Appendix D, and Appendix E. The petitioners alleged, *inter alia*, deprivations of civil rights and constitutional injury within the meaning of 42 U.S. Code § 1983 and the 4th Amendment, the American Disability Act, Monell, and a Bivens Claims ².

¹Appeal No. Case No. 19-2209

² 2:18-cv-12634

³ 2:13-cv-20000-RDP (the "Settlement"). 308 F. Supp. 1241 (N.D. Ala. 2018

⁷ 2:18-cv-12634, E.D Michigan. ECF 37-1. Filed 2-22-19. Page ID 728. P 131 of 183

JURISDICTION

In 2018, petitioners filed the instant case in the United States District Court for the Eastern District of Michigan. In *Tumey v. Ohio*, 273U.S 510 (1927), the US Supreme Court struck down a scheme that financially rewarded for successfully prosecuting cases related to Prohibition⁶. Despite complete field preemption under Controlled Substance Act (CSA 802 (56)(c)), here, the respondents are public officials, or agents of the government, who have the intent to benefit from the Controlled Substance Act. Federal Preemption, by the health care practitioner, under CSA 802 § (56) (c) controls. Under CSA 802 § (56) (c), the health care practitioner determine the appropriate doze of controlled substance pain medication prescribed to a particular patient. Patients are dying ¹⁴.

The Petitioner filed a timely filed this Petition and Jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. §1254 (1). The United States court of appeals, of the Sixth Circuit, has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Conflict of interest forecloses justice ¹⁹.

⁶ *Tumey v. Ohio*, 273U.S 510 (1927)

¹⁴ <https://end-overdose-epidemic.org/wp-content/uploads/2021/09/AMA-2021-Overdose-Epidemic->

¹⁹ (Case No 1: 21- 01635 (D.C (2021). Doc 15. Filed 10-25-21. Page 25 of 31.

CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE

Controlled Substance Act (CSA 802 (56)(c)

Fourth Amendment to the United States Constitution

Gramm Leach-Bliley Act § 501,

42 U.S.C § 1983

42 U.S.C. § 1985(3)

42 C.F.R §§ 2.61-2.67

Patient Protection and Affordable Care Act (“ACA”) (codified at 42 U.S.C. §18116)

I. STATEMENT OF THE CASE

A . Facts Giving Rise To This Case

In 2015, pursuant to Operation Stonegarden, Operation Gateway and proprietary pecuniary gains⁸, MANTIS (Monroe Area Narcotic Investigation Team), Monroe City Police and the Monroe County Sheriff’s department, BCBSMMIC (Blue Cross Blue Shield of Michigan Mutual Insurance Company), BCBSA (Blue Cross Blue Shield Association) received cash from the Drug Enforcement Agency to search for drugs.

⁸ Case No. 16-139517-CF

In violation of 42 U.S.C. § 1985(3) , William Paul Nichols, BCBSMMIC,BCBSM (Blue Cross Blue Shield of Michigan), BCBSA , BCS Financial Group, Brian Bishop, William Chamulak, Marc Moore, Robert Blair, William Paul Nichols, Michael Hendricks, and MBT Financial Inc., (now known First Merchant Bank Inc. by merger in succession) had an express or implied agreement between the members of the joint enterprise with the intent to perform an invalid search warrants on 9/21/2016, 9/27/2016, and February 2018.

At about 08:30 on 9/26/2016, a Michigan State Police custodial interrogation of the doctor was misrepresented as a warrantless DEA administrative inspection with the intent to obtain the name and address of patients undergoing substance abuse treatment. At about 10:00 am, law enforcement returned, executed of a search warrant obtained on 9/23/2016. The law enforcement team comprised of multiple government agencies, including MANTIS (Monroe Area Narcotic Team Investigation Service), the DEA (Drug Enforcement Agency), the DEA local Task Force Officers, the Michigan State Police, Monroe Sheriff's department, Monroe City Police . The patients whose name and addresses were searched and seized at 08:30 were denied right to counsel while interrogated by the DEA, MANTIS. The body of the patients who were present in the office (730 N. Macomb Street, Suite 222, Monroe Michigan 48162) at the time of the raid at the about 10:00 am, were also searched and seized and denied rights to counsel. The search warrant was issued without specific causation that the treating physician caused a rate of addiction, above and beyond, the

prevailing rate of addiction in the community. The diseased state, the medical status , specific versus general causation, and the availability or unavailability of alternative medical care of similar risks and efficacy was not considered, in the finding of sufficient evidence for a finding probable cause in the support for the issuance of a search warrant of the petitioner's medical records.

A public/private, trade organization, partnership named HFPP (Healthcare Fraud Prevention Partnership): 1) selects physicians based on age, assets owned, race and nation of origin as a suspect class, 2) prevent those physicians from practicing medicine in a race –neutral manner by coordinating selective enforcement of the Controlled Substance Act on the suspect group of physician, broke down the Chinese wall between the DEA and OIG /CMS, while encouraging the performance of improper search and seizure of the privileged medical records and personal identification data of patients of the suspect class of physician.

Health and Human Services via Centers for Medicare & Medicaid Services (Project CMS Spark) funded the HFPP. BCBSA and its franchisees are the primary and most influential members of HFPP also known as the Champion Partners. BCBSA, BCBSMMC, Qlarant Solution Inc. (formerly Qlarant Medic), General Dynamics Information Technology (GDIT), Independence Blue Cross (IBC), , Appriss Health (now a subsidiary of Equifax, known as Bamboo Health) among other private companies, have intertwined themselves under HFPP, as state actors, with the DEA, OIG, CMS, Medicare , Medicaid, and the FBI in prospective criminal investigations. The above name private parties have advertised their entry, as state actors acting the color of law, into: 1)

traditional police of criminal investigation, i.e. Medicare “Pill Mills” 2) into governmental prosecutorial functions by coordinating the criminal conviction of physicians, and 3) provides expert witness for the government.

Prosecutorial misconduct, violation of Title 21 USC Codified CSA §879, and violation of Title 21 USC Codified CSA §880(Administrative inspections and warrants) have resulted here , among other cases ²⁴. The software fails to prove the mens rea necessary under distributing controlled substances (21 U.S.C. § 841(a)(1)) and health care fraud (18 U.S.C. § 1347). Qlarant Solution Inc. (formerly Qlarant Medic), General Dynamics information technology, Medicare “Pill Mills” analysis , BCBSMMIC, Blue Cross Blue Shield Association, Independence Blue Cross, are commercial suppliers of defective opioid monitoring software product ¹⁵ for profits^{17,22}. The software product use a classification scheme based on race, age, nation of origin of the physician and the medical status of patients deemed disabled under the American Disability Act (ADA).

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24 Malik v. City of New York. (20-1969-cv) U.S Court of Appeals For the Second Circuit

15 (Case No 1: 21- 01635 (D.C (2021))Document 9, 9-1, 9-2

17 <https://www.metrotimes.com/news-hits/archives/2019/03/08/bernie-sanders-criticizes-blue-cross-ceo-over-19m-pay>.

22 The Michigan Health Endowment Fund, or the Health Fund for short, was created through Public Act 4 of 2013

Under Carpenter⁴ (where data is involuntary given by the person, the Supreme Court invalidated the third party doctrine). The plaintiff has a reasonable expectation of privacy in his PDMP data. Where PDMP data of a patient is involuntary given to the state of Michigan and an unconsented, warrantless, search and seizure of the plaintiff's PDMP data is taken is at issue here. Carpenter should apply here as well. Pursuant to Carpenter, invalid search and seizure of PDMP (Prescription Drug Data Monitoring Program), would be unlawful.

“ Prescription Drug Monitoring Programs (PDMP) began on paper as a set of law enforcement tools. The first program, in New York in 1918, was rescinded after three years.^[17] California started one through the Bureau of Narcotic enforcement in 1939 followed by Hawaii in 1943.^[18] When Illinois chose to begin one in 1961, it was housed in the Department of Health.^[19] As other states began their programs, all were used for Schedule II drugs and required duplicate or triplicate prescription forms that relied on tracking serial numbers. In 1977, the Supreme Court ruled in *Roe v. Whalen* that these PDMPs were not unconstitutional.^[20] The Court felt that PDMPs did not violate confidentiality and were part of state police powers. This ruling was based on paper, static PDMPs with very limited information. In 1990, Oklahoma was the first state to mandate electronic transmission of PDMP data.^[21] From 2000-2017, twenty-seven electronic PDMPs were

established.^[22] In 2010, five states had mandatory prescriber query laws; by 2021, forty states had mandatory query laws.^[23] Forty-seven states allow interstate sharing of data.^[24] Unlike their paper predecessors, today's PDMPs have a wealth of personal information.^[25] They track Schedule II-V drugs and some track unscheduled medications. Prescriptions reveal information from diagnosis to location. " (20)

The plaintiff had a possessory interest and a reasonable expectation of privacy in the encrypted medical records, housed by IPatientCare, Inc. but under the sole dominion and control of the physician. IPatientCare, Inc. providing software maintenance services, pursuant to *United States v. Jacobsen* - 338 U.S. 160, 69 S. Ct. 1302 (1949). The presence of malice, violation of the ADA, gross negligence, and reckless conduct, bar: 1) qualified immunity, 2) insertion of James Stewart, aka James Howell, into a drug treatment facility without a court order, as required under Title 42 C.F.R. §§2.61-2.67, 3) vitiates qualified and absolute immunity. The ADA does not provide for absolute immunity or qualified immunity.

4 Carpenter v. United States, 138 S. Ct. 2206, 2223 (2018)

20 Appendix F, P-A38

James Stewart, aka James Howell, : 1) was a BCBSMMIC employee, 2) was given a false state of Michigan driver's by the Michigan State Police and MANTIS, 3) was a false medical referral by BCBSMMIC employee J. Alan Robertson M.D., 4) was improperly deputized under the name James Stewart, 5) was given a false social security card by the DEA., 6) obtained controlled substances from a Monroe Walgreen, 7) ingested controlled substances while he was acting as an investigator for the joint enterprise, 8) ingested controlled substances, 9) distributed controlled substances to Marc Moore, 10) obtained a false MAPS (Michigan Automated Prescription Service) report from the Bureau of Professional Licensing, 11) invaded the patients and the doctor's privacy, by videotaping patients undergoing pain and substance abuse treatment without consent, privilege, or notice .

A Monroe City police officer lacks jurisdiction over the City of Monroe Township. On 9/26/2018, Monroe Police Chief Charles F. McCormick IV allowed Monroe City Police officers Brent Cathey, Dereck Lindsay, Aaron Oetjens, Mike Merkle, Mike McClain and Donald Brady to exceed their scope of employment and jurisdiction by conducting raids, search and seizure of evidence of evidence at a private home, and 2 medical offices located in Frenchtown Township (Stewart Road and at the Hospital). Furthermore, the Monroe City Police officers did not submit to the Monroe City Police evidence room, the evidence that these officers had searched and seized. The unconstitutional searches and the broken chain of custody of evidence were ratified by: 1) Monroe Assistant prosecutors Allison Arnold and Jeffrey Yorkey, 2) Monroe Chief Assistant Prosecutor Michael Roehrig , 3) Monroe Prosecutor William Paul Nichols, 4) Magistrates Tina Tod and Jessica Chaffin, along with Judge Jack Vitale who did not log the

evidence gathered , pursuant to the search warrants that they authorized. The petitioner had her medical records and personal identifier data analog and digital formal at the Frenchtown locations. On 9/26/2016, the medical offices had been operating as they have done over the past 20 years; there were no exigent circumstances, nor good faith, for the unlawful search and seizures. Pursuant to *Franks*²² violation, perjury of Dina Young, improper data mining⁹, false statements by Jennifer Nash and Jeanette Beeler and James Stewart and Carl Christensen M.D¹¹ and Sean Street, disproportionate high health care administrative cost^{5,20} ratified by systemic and recurrent misconducts by the medical board⁵ and racial prejudice, the petitioner's medical records and PDMP Data were collected on the basis of a warrant granted on the basis of a false statement⁸.

5. Kaul et al v. Federation of Medical Boards et al , No. 19-cv-3050 (TSC)(D.D.C. 2021)

10 . 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16. Section IV

8- Tracy Clare Micks Harm, et al v. William Paul Nichols et al, Consolidated case. 2:18-cv-12634, E.D Michigan. ECF 246-2. Filed 4-29-19. Page ID 4482. P 15 to 19 of 27

9- *ibid*. ECF 246-2. Filed 4-29-19. Page ID 4482. P 24 of 27, ¶90-91

11 *ibid*. ECF 37-1. Filed 2-22-19. Page ID 750. P 153 to 156 of 183

20 David M. Cutler, Harvard University: Reducing Administrative Cost in U.S Health Care. The Hamilton Project. Brookings Institute. March 2020

22 *Franks v. Delaware*, 438 U.S. 154

"Everything to be searched or seized must be specified in the warrant itself." *Groh v. Ramirez*, 540 U.S. 551, 557 (2004). "If the scope of the search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional without more." *Horton v. California*, 496 U.S. 128, 140(1990).

On 8/24/2016, Rochelle Basinger, prosecutor William Paul Nichols step daughter, injected the drug Fentanyl, hung herself, and subsequently killed herself in a suicide. On 9/26/2016, Dr. Pompy is raided, his money taken, and effectively shut down. In July of 2017, Brandon Nichols, the son of William Paul Nichols, died of an overdose of illegal drugs. In 2019, MANTIS informant Joshua Cangliosi overdosed from overdosed and died.

Interventional Pain Management Associates P.C, and Dr. Pompy had a fiduciary relationship with MBT Financial Inc. (Now, known as First Merchant Bank, Inc.) On 9/21/2016, Robert Blair of the Monroe County Sheriff's department, obtained Dr. Pompy's financial information from MBT Financial Inc., dba/ Monroe Bank and Trust without consent, privilege, or notice. Despite a fiduciary relationship and Title 15 that established a reasonable expectation of privacy against a third party search, MBT Financial Inc. (now First Merchant Bank) MBT Financial Inc., Susan Mehregan and Thomas Scott, allowed the warrantless search and seizure by Robert Blair to proceed, without consent privilege or notice of the bank account holder. Without consent, privilege, or notice, Robert Blair would reuse the improperly searched and seized data in an affidavit of support of a search warrant for the

petitioner's medical records and her doctor's medical license PDMP (Prescription Drug Monitoring Program) data. MBT Financial, Susan Mehregan and Thomas Scott illegally disclosed financial information, related to Lesly Pompy M.D. Such behavior constitutes a Violation of Title 15. The information was used in the obtaining of the search warrant of the petitioner's medical records.

On 9/21/2016, Robert Blair of the Monroe County Sheriff's department, obtained Dr. Pompy's financial information from MBT Financial Inc., dba/ Monroe Bank and Trust without consent, privilege, or notice. Despite a fiduciary relationship and Title 15 that established a reasonable expectation of privacy against a third party search, MBT Financial Inc. (now First Merchant Bank) MBT Financial Inc., Susan Mehregan and Thomas Scott, allowed the warrantless search and seizure by Robert Blair to proceed, without consent privilege or notice of the bank account holder. Without consent, privilege, or notice, Robert Blair would reuse the improperly searched and seized data in an affidavit of support of a search warrant for the petitioner's medical records and her doctor's medical license PDMP (Prescription Drug Monitoring Program) data.

First Merchant Bank has a history classification system based on race. On August 12, 2019, the court approved the entry of settlement agreement and agreed order resolving *United States v. First Merchants Bank* (S.D. Ind.). On June 13, 2019, the United States filed the complaint and proposed settlement. The complaint alleged that from 2011 to at least 2017, First Merchants violated the Fair Housing Act and Equal Credit Opportunity Act on the basis of

race by engaging in unlawful redlining in Indianapolis by intentionally avoiding predominantly African-American neighborhoods. The Department's complaint also alleges that First Merchants adopted a residential mortgage lending policy that had the effect of denying residents of predominantly African-American neighborhoods equal access to credit in violation of federal law.

The 9/23/2016 search warrant did not list IPatientCare Inc., as a location, nor the items, to be searched and seized, in particularity. Pursuant the "Patient Rights Statute (MCLA 333.20201)", the Health Care Portability and Accountability Act (HIPA), the 4th Amendment, and the "Federal Privacy of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of, and was entitled to, privacy in her medical records, PDMP data, and personal identification data, housed by IPatientCare Inc. Among other defects of the 9/23/2016 and 8/14/26 search warrant include: 1) Lacked a court transcript, 2) Lacked the caption and seal of the issuing court, 3) lacked a notarized signature to prevent perjury, 4) supported by false statement in the affidavit by Robert Blair, Sean Street, James Stewart, 5) exceeded the geographical jurisdiction of the Monroe District Court, 6) exceeded the jurisdiction of the Monroe District Court by a) exceeding the statutory allowed dollar amount in controversy, personal jurisdiction over IPatientCare Inc., 7) Personal jurisdiction over the New-Jersey Citizen, 8) violated Subject matter jurisdiction over interstate commerce between the State of Michigan and the State of New Jersey, 9) exceeded the permissible execution period of a search warrant on 5/26/2018 by Michael Hendricks of HHS/OIG. Michael Hendricks already had obtained the medical records from Brian Bishop on 4/23/2018, 10) absence of court logs

determining the location for a hearing, 11.) perjured statement in the affidavit, 13) IPatientCare Inc was not listed in particularity as a place to be searched and seized. The Monroe Michigan First District Court purposefully issued jurisdictionally defective search warrants over IPatientCare Inc., and E*TRADE of New Jersey and Merrill Lynch of Florida¹⁰.

While children screamed from the behavior of a mask armed force that shock the conscience, improperly trained officers performed warrantless search and seizure of digital content of the Cell phones of Dr. Lesly Pompy, Erica Shawn, Jordan Rippee, Diana Knight²⁵. Potential conflict of interest^{18,29,21}, liability¹² for inadequate or improper training of police officers support a finding for punitive damages.

25 In violation of Riley v. California 134 S. Ct. 2473 (2014)

10 . 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16. Section IV

12 *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197 (1989)

18 <https://www.freep.com/story/news/local/michigan/2019/01/08/michigan-lara-director-orlene-hawks-married-lobbyist-marijuana/2499886002/>

29 <https://www.freep.com/story/money/business/2019/03/08/ceo-blue-cross-blue-shield-michigan/3071484002/>

21 <https://www.freep.com/story/money/business/2019/03/01/blue-cross-blue-shield-michigan-daniel-loepp/3028558002/?fbclid=IwAR0eEqqnSg6>

IPatientCare Inc., is domiciled, headquartered, and with its principle place of business located in the state of New-Jersey. The Michigan 1st District Court issued a search warrant to obtain medical records located in the State of New-Jersey. On 9/27/2016 Judge Jack Vitale, of the Michigan First District Court, issued against Dr. Pompy a search to be executed in the State of New-Jersey (E-Trade) and the State of Florida (Merrill Lynch). The Statute M.C.L §600.761, and the State of New-Jersey RULE 3:5-1, do not provide for the execution of search warrant issued in the State of Michigan, to be validly executed in the State of New Jersey. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale acted outside the jurisdiction of their Monroe Michigan First District Court. The action outside of their jurisdiction, vitiate absolute immunity. A pattern or practice amounting to a policy of deliberate indifference to clearly established State and federal laws, vitiate qualified immunity. The ADA provides for no absolute nor qualified immunity.

The name of the issuing court on the 9/23/2016, 9/27/2016, 9/28/2016, 8/14/2017 search warrants was purposefully erased on the warrants. The time and date stamps on the warrants were also purposefully erased on most of the search warrants. The impression seal of the issuing court is absent. The lack of the impression seal on the search warrant represents a violation of MCL 780.651. With the erasing of the name of the issuing court and the time and date stamp on the search warrants, plus the absent seal of the court, the insignia of valid, reliable court documents, are lacking.

On the few search warrants where the search warrants are time and date stamped, other mysteries create substantial doubt on the validity of the documents. For, the time and date stamp on the search warrants are either : 1) inconsistent with the time and date the search warrant was signed by the judge or magistrate, or 2) inconsistent with the date and time the search warrant was actually executed. Magistrates Chaffin and Tina Todd, Judge Jack Vitale acted outside of their jurisdiction, outside the scope of their employment. MCL 780.657 prohibits a court from exceeding its authority. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale had no statutory jurisdiction over the state of New-Jersey Citizen, IPatientCare Inc. The authority of the Monroe District Court was exceeded. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale violated MCL 780.657

The evidence searched and seized on 9/26/2016 , from the execution of the 9/23/2016 search warrant, was not : 1) properly tabulated and returned to the Michigan 1st District Court, 2) properly entered into a chain of custody into the evidence room by an evidence technician, 3) returned to the owners of medical records. Marc Moore, Brian Bishop, Robert Blair, Carl Christensen M.D., Leon Pedell M.D., BCBSMMIC, continues.

Where the petitioner had an expectation of privacy under State HIPAA, the above parties used the defective 9/23/2016 search warrants search and seize my medical records. The name of the issuing court, the date and time stamp on the search warrant, were erased. Such search was unreasonable. The Michigan Constitution, Article §11, prohibits unreasonable search and seizures. The parties above violated the Michigan Constitution, Article §11.

It was widely known within the Monroe County law enforcement and Brian Bishop's office that the officers who participated in the 9/26/2018 raid could not reasonably have had confidence in the information sworn- to in the 9/23/2016 warrant. Riddled with errors and false statements by Sean Street and James Stewart, Robert Blair obtained a second warrant issued by the Michigan First District Court on 8/14/2017. Robert Blair executed that second search warrant again at IPatientCare Inc., The latter is a company located, headquartered and domiciled in the state of New-Jersey. IPatientCare Inc. had no office and no employees in the state of Michigan in 2016. The second execution was faxed on 8/14/2017, ostensibly for the same medical records from already in possession of Brian Bishop, Robert Blair, BCBSMMIC, Leon Pedell M.D., Carl Christensen M. D., Marc Moore, and John Does. The 8/14/2017 faxed pretextual warrant instructed IPatientCare Inc., not to actually resend the medical records already in the possession of the joint enterprise, but that the intent of the warrant was to cover the errors associated with the 9/23/2016 warrants.

Pursuant the "Patient Rights Statute (MCLA 333.20201)", the Health Care Portability and Accountability Act (HIPA), the 4th Amendment, and the "Federal Privacy of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of privacy in her medical records and her personal identification data. An individualized suspicion was necessary prior to establish probable cause for a lawful search and seizures of the medical records and personal identification data. The probable cause for the 9/23/2016, 9/27/2016, 8/14/2017, 5/23/2018 search warrants are based on material misrepresentation of past and present facts, in that: 1) the affidavits of Sean Street and Dina Young, 2) James Stewart aka James Howell's pain

questionnaires representing that he was in pain, 3) Blue Cross Blue Shield of Michigan Mutual Ins Company prescribing data analytics, 4) representation of medical status in a medical referral by Blue Cross Blue Shield of Michigan Mutual Ins Company employee, J. Alan Robertson M.D, 5) statements made by Robert Blair to Monroe Bank and Trust, 6) that Carl Christensen M.D. never used the pain medication Subsys, 7) Leon Pedell M.D was substantially involved in the treatment of pain. Specific causation for a probable cause in the obtaining of the petitioner's medical records is lacking.

MCL 780.652 provides that grounds for issuance of the search warrants be proper. Magistrates Chaffin and Tina Todd, Judge Jack Vitale, and Robert Blair improperly issued, facially defective, third -party, extraterritorial, out of court search warrants. They violated MCL 780.652 to obtain the plaintiff's medical records. The Statute M.C.L §600.761, or common law does not allow extraterritorial warrants. BCBSMMIC used the search warrant of the Monroe District Court to obtain extraterritorial evidence. BCBSMMIC violated M.C.L §600.761.

On 9/30/2016, DEA agent Brian Bishop filed a complaint against Dr. Pompy's State of Michigan medical license at the Bureau of Professional Licensing.

In December 2016 and via a Civil Forfeiture action, jurisdiction of the Pompy case was moved from the Michigan 1st District Court to the Michigan First Circuit Court. Nevertheless, Judge

Vitale's magistrates issued, to Robert Blair, a second search warrant for D. Pompy's medical records, to be executed at IPatientCare Inc., located in the State of New-Jersey.

On 8/04/2017, Dina Young swore in an Affidavit to have served an ISO (Immediate Suspension Order). Actually, Dr. Pompy was served with the ISO by Brian Bishop at Promedica Monroe Regional Hospital on 8/04/17. On August 4, 2017, Brian Bishop went to Promedica Monroe Regional Hospital to serve Dr. Pompy with an order of Immediate Suspension regarding his State of Michigan Medical license.

At the time of service, Dr. Pompy was performing nerve blocks to ease the pain and suffering of his patients, without prescriptions for controlled substances. Nevertheless, Dina Young swore to have served the subpoena to Dr. Pompy. The Bureau of Professional Licensing used this false service of process to acquire, disclose, redisclosed, maintain, and dispose medical records of the petitioner, without consent, privilege, or lawful notice.

A faxed package with a cover page dated 8/15/2017, 2:15 pm, from Robert Blair of the Michigan State Police and MANTIS, was faxed to IPatientCare Inc. of New-Jersey. The faxed package contains a search warrant with the name of the issuing court erased. The search warrant signed by Jessica Chaffin, is dated as issued on 8/14/2017. The court's time and date stamp on the search warrant indicate "Aug. 15. 2: 17 PM" on Page 3, and "Aug 15, 2017 2:18 PM" on page 4. This same time and date stamp appears in the same document in packages that was not faxed to IPatientCare, Inc. The erased first sheet that would have indicated the name of the issuing court, the sequence of date and time on the search warrant, the date

Magistrate Jessica Chaffin signed the search warrant, and the date on the faxed package, are inconsistent.

The state of Michigan law requires that searched and seized evidence must be entered on tabulation sheets and filed with the issuing court. MCL 780.655 provides that for the proper tabulation, chain of custody, restoration to the owners of medical records and office assets, and disposition of medical records. Marc Moore, Brian Bishop, Robert Blair, Carl Christensen M.D., Leon Pedell M.D. failed to abide by the requirements of MCL 780.655, by failing to provide tabulation of the plaintiff's medical records to the Monroe District Court. Material searched and seized by MANTIS/MSP/DEA/ Monroe City Police/ DEA Task Force Officers were not filed as tabulation sheets and returned to the issuing magistrates Chaffin or Todd, or judge Jack Vitale of the Monroe First District Court. The materials, including the plaintiff's medical records, were not logged in the Monroe City Police via an evidence technician in an evidence room. Evidence, including iPhone, IPAD, and IPOD has disappeared without a trace.

On March 16, 2018, Judge Daniel White from the Michigan First Circuit Court ordered the returned of evidence. Marc Moore, Brian Bishop, Robert Blair, Carl Christensen M.D., Leon Pedell M.D., BCBSMMIC, MANTIS (Monroe Area Narcotic Team Investigation Service) has not returned : 1) the entire amount of the money forfeited, 2) the medical records, 3) the seized

IPAD and IPOD. Despite the Monroe Michigan First District Court's limited jurisdiction that include : 1) geographical state of Michigan and not Interstate Commerce, 2) amount in controversy under \$25,000 ; the Monroe Michigan First District Court's did not release original jurisdiction.

On 8/14/2017, realizing the facially -defective, extra-territorial, warrants Robert Blair obtained a second warrant for my medical records in 2017. The warrant exceeded the limited jurisdiction of the Monroe First District Court.

Specific causation, outside of general statistical data prescription habits lack basis for a finding of probable cause to issue the search warrants for Petitioner's record. The validity of the 9/23/2016, the 9/27/2016, and 8/14/2017 search warrant are issues in the active case *United States v. Pompy*, No. 18-20454 (ED Mich.)

Under the lead case *Tracy Clare Micks Harm et al vs. William Paul Nichols et al*, Consolidated cases 2.18-cv-12634, E.D Michigan, the former patients of Dr. Pompy, citing the defective the 9/23/2016, the 9/27/2016, and 8/14/2017 search warrants, for the unlawful acquisition, disclosure, redisclosure, maintenance, and disposition of their medical records without consent, privilege, or notice. MCL 780.652 provides that grounds for issuance of the search warrants be proper. Magistrates Chaffin and Tina Todd, Judge Jack Vitale, and Robert Blair improperly issued, facially defective, third -party, extraterritorial, out of court search warrants. They violated MCL 780.652.

The name of the issuing court on the 9/21/2016, 9/23/2016, 9/27/2016, 9/28/2016, 8/14/2017 search warrants was purposefully erased on the warrants. The time and date stamps on the warrants were also purposefully erased on most of the search warrants. The impression seal of the issuing court is absent. The lack of the impression seal on the search warrant represents a violation of MCL 780.651. With the erasing of the name of the issuing court and the time and date stamp on the search warrants, plus the absent seal of the court, the insignia of valid, reliable court documents, are lacking.

On the few search warrants where the search warrants are time and date stamped, other mysteries create substantial doubt on the validity of the documents. For, the time and date stamp on the search warrants are either : 1) inconsistent with the time and date the search warrant was signed by the judge or magistrate, or 2) inconsistent with the date and time the search warrant was actually executed. Magistrates Chaffin and Tina Todd, Judge Jack Vitale acted outside of their jurisdiction, outside the scope of their employment. MCL 780.657 prohibits a court from exceeding its authority. Magistrate Tina Todd and Jessica Chaffin, and Judge Jack Vitale had no statutory jurisdiction over the state of New-Jersey Citizen, IPatientCare Inc. The authority of the Monroe District Court was exceeded. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale violated MCL 780.657

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Michael Hendricks of HHS /OIG used the 9/23/2016 warrants to obtain Dr. Pompy's medical records on 4/26/2018 from Brian Bishop in 2018. Those same medical records, that Brian Bishop got from New-Jersey using the Michigan 9/23/16 forged, third-party, extraterritorial warrant. A New-Jersey judge never approved the Michigan warrant to be used in the state of Michigan. The Michigan warrant was void in the State of New-Jersey. Despite those material inconsistencies on government documents, the federal prosecutors, Brandy McMillion and Wayne Pratt, disregarded the perjured affidavits, obtained my medical records from Brian Bishop, and indicted Dr. Pompy in June 2018.

The pattern of deliberate indifference to constitutional rights persists. *In Portfolio Recovery Associates LLC v Lesly Pompy* , Case No 20G 1162 GC Mich. 1st Distr. Court (2020), Lesly Pompy raised the issues that the plaintiff has failed to show: 1) a debt existed in the amount stated, or in any amount , at the time alleged by Portfolio Recovery Associates Inc., 2) a proper assignment of Lesly Pompy's specific account actually occurred, 3) or that Dr. Pompy had a contract with Portfolio recovery, and the issue of judge Jack Vitale's disqualification under MCR 2.003(B). Although there existed reasons for disqualification exist due to potential conflict

of interest, bias motive, a party to proceedings, Judge Jack Vitale refused to sign an order of disqualification. (SCAO Form MC 264, Order of Disqualification/Reassignment). Systemic and recurrent misconduct persist.

The search warrants, once viewed in the totality of the circumstances of structural errors, constitute the express expression of the biased trial judge, Jack Vitale.

Under *Tumey*⁶, the search warrants for the petitioner's PDMP and medical records represent structural errors, such that the search warrants and unlawful contracts ³⁰ must be vacated. The State of Michigan Statements of Works (SOW) ¹ requires that Blue Cross Blue Shield of Michigan Mutual Insurance Company (BCBSMMIC) and Blue Cross Blue Shield of Michigan (BCBSM) to be HIPAA compliant ²⁰.

B. The State Court Proceedings

Without resolving the case, summary disposition was granted to the Monroe City Police ¹. Despite conflict of interests¹⁵, Bureau of Professional Licensing and the Federation of Medical Boards¹⁶ ratified the unconstitutional acts.

C. The District Court Proceedings

Acts constituting deliberate indifference to constitution rights occurred ¹³. The dismissal of the petitioner represents a reversible error arising out of an improper search and seizure of law enforcements.

D. COURT OF APPEALS FOR THE SIXTH CIRCUIT Court Proceedings

The petitioner refined responsive pleading. Pursuant to reversible and structural errors, the case was improperly dismissed, since the petitioner is likely to prevail on the merits.

1 . 2:18-cv-12634, E.D Michigan. ECF 21-1. Filed 1-9-19. PAGE id 336. P 52 of 62.

6 Tumey v. Ohio, 273U.S 510 (1927)

13 Consolidated: 19-2173, U.S. CA 6. Document 61. Filed 10-21-2020. P9 -11.

35 <https://detroitsocialist.com/dsa-fights-to-remove-insurance-ceo-from-whitmer-transition-team-64588b045799>

16 Federation of State Medical Boards- Model Policy on DATA 2000 and Treatment of Opioid Addiction in the Medical Office of April 2013

30 CONTRACT NO. 190000000755 THE STATE OF MICHIGAN and BCBSM

STATE OF MICHIGAN PROCUREMENT Department of Technology, Management, and Budget 525 W. Allegan St. Lansing, MI 48933 P.O. Box 30026, Lansing, MI 48909. NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 190000000755 . THE STATE OF MICHIGAN and BCBSM

"The Contractor must ensure that all providers agree to the following appointment access times: 1. Life-threatening emergency - immediately 2. Non-Life-threatening emergency - within 6 hours 3. Urgent care - within 48 hours 4. Initial visit for routine care - within 10 business days. The Contractor will conduct an accessibility analysis for access to behavioral health care annually in accordance with the NCQA standard timeframes indicates above.

(12). HIPAA compliance. The parties acknowledge and agree that this Agreement involves the use and disclosure of HIPAA protected health information. The parties therefore agree that all uses, and disclosures of HIPAA protected health information pursuant to this Agreement will be undertaken in compliance with all applicable HIPAA requirements. BCBSM shall disclose HIPAA protected health information to a third party, other than HHS or other federal government agency in connection with the Program, only upon Sponsor's written certification that such disclosure is permitted under HIPAA. BCBSM and Sponsor agree that this Agreement satisfies the requirements of 45 C.F.R. § 149.35(b)(2). BCBSM shall provide HIPAA protected health information directly to Sponsor or Sponsor's designee under Section 4 only if Sponsor certifies in writing that: (A) appropriate HIPAA business associate agreements are in effect between BCBSM, Sponsor, Sponsor's designee, and the Employment-Based Plan; (B) the plan documentation for the Employment-Based Plan permits such disclosure; and (C) the Sponsor has taken all other steps required by HIPAA in order to legally receive such protected health".

REASONS FOR GRANTING THE PETITION

ARGUMENT SECTION

QUESTIONS PRESENTED

1. **Where a peril is created, by the government accompanied with private entities acting as state actors under the color of law , via an invalid warrantless search and seizure of a patient's possessory interest in their digital medical records and personal identifier, in a state other than the state described in particularity in the search warrant, and where a legitimate expectation of privacy existed, and the peril caused a constitutional 4th amendment and a physical in injury, does that petitioner has standing for a cause of action for a 42 U.S.C § 1983 remedy under a Monell and /or a Bivens Claim ?**

A public/private partnership named HFPP (Healthcare Fraud Prevention Partnership) , selects physicians based on race and nation of origin as a suspect class, prevent those physicians from practicing medicine in a race –neutral manner by coordinating selective enforcement of the Controlled Substance Act on the suspect group of physician, broke down the Chinese wall between the DEA and OIG /CMS, while encouraging the performance of improper search and seizure of the privileged medical records and personal identification data of patients of the suspect class of physician. The participating private entities in HFPP effectively became agents of the government.

Dr. Pompy is of the African American Race, holding Haiti as the nation of origin. In 2016, Dr. Pompy held a state of Michigan medical license, a DEA registration, and an X - DEA registration. The X-DEA registration allows the physician to treat the

drug addicted patient. For the purpose of the court order necessary under 42 CFR §2.61-2.67, the state of Michigan, the DEA, BCBSMMIC, among others, knew that Dr. Pompy treated patients addicted to control substances.

Pursuant to CFR 42 § 2.61-2.67, the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., the Affordable Care Act, 42 U.S.C. §18116, et seq, Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5th Vital Sign," EMTALA laws, and the Controlled Substance Act (CSA 802 (56)(c)), the petitioner was entitled to medical care without undue burden.

II . Authority:

A . Fourth Amendment: The Fourth Amendment to the U.S Constitution provides, " the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated , and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or thins to be seized"

B . 42 U.S.C § 1983

C . 42 U.S.C. § 1983 (Klu Klux Klan Act) provides for:

"Section 1983 Litigation" refers to lawsuits brought under Section 1983 (Civil action for deprivation of rights) of Title 42 of the United States Code (42 U.S.C. ... Section

1983 provides an individual the right to sue state government employees and others acting "under color of state law" for civil rights violations.

D. Bivens Claim:

"Section 1983 Litigation" refers to lawsuits brought under Section 1983 (Civil action for deprivation of rights) of Title 42 of the United States Code (42 U.S.C. § 1983). Section 1983 provides an individual the right to sue *state* government employees and others acting "under color of state law" for civil rights violations. Section 1983 does not provide civil rights; it is a means to enforce civil rights that already exist.

Bivens action: Section 1983 only applies to local state governments. A "Bivens action" is the *federal* analog which comes from *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Subject to certain exceptions, victims of a violation of the Federal Constitution by a federal officer have a right under *Bivens* to recover damages against the officer in federal court despite the absence of any statutory basis for such a right.

42 U.S.C. § 1985(3) provides:

"If two or more persons . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws [and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do . . . any act in furtherance of the object of such conspiracy, whereby another is injured . . . or deprived of . . . any right or privilege of a citizen of the United States, the party so injured or deprived" may have a cause of action for damages against the conspirators.

Equal Protection Clause

The Equal Protection Clause is part of the first section of the Fourteenth Amendment to the United States Constitution. The clause provides "nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws".

Opioids Medications are used by chronic pain patient pursuant to their liberty interest in living life in a pain-neutral environment. The unfairly prejudicial actions of HFPP, Qlarant and BCBSMMIC in the selection of doctors involved in the treatment of pain, the patient in pain suffered a harm, loss of an opportunity in a manner different that suffered by the general public.

III . ANALYSIS

A . An Unreasonable Illegal Search And Seizure Occurred.

The lack of well-defined statute and a clear expression of congressional intent into this area of unsettled law, new entrants occur in the search and seizure of digital data market. There are several bills currently making their way through Congress, the Consumer Online Privacy Rights Act (S.2968), the Online Privacy Act of 2019 (H.R. 4978) and the Privacy Bill of Rights Act (S. 1214), that allow for the individual alleging a violation of the respective act to bring an action in "any court of competent jurisdiction." Congressional intent is to provide for a private cause of action for violation of the privacy of private data.

HFPP, "Equifax acquisition of Appriss Insights,^[1] who is rebranding as Bamboo Health.^[2] How much data sharing goes on between the entities? Just as Appriss' NarxCare score^[3] is a black box^[4], never subjected to peer review or outside

scrutiny^[5], this reorganization seems designed to hide data sharing .” (20) Such actions by drug warriors made the opioid epidemic deadlier ²⁶. Pursuant to *Carpenter*, the United States Supreme Court bar the search and seizure of warrantless cell phone tower data involuntary given to a third party. Here pursuant to an extraterritorial defective search warrant lacking probable cause, the petitioner’s medical records were obtained via the third party IPatientCare Inc. Carpenter applies here⁴.

The petitioner had a reasonable expectation of privacy in the possessory interest in his/her medical records. Plaintiff’s had a reasonable expectation of Privacy, in the property interest of their medical records, under Katz. (*Katz v. United States* 389 U.S. 347 (1967). The medical records were held in an encrypted private manner, consistent with a reasonable expectation of privacy. The petitioner’s medical records, PDMP data, and personal identification were entitled to protection under the Fourth Amendment.

4 Carpenter v. United States, 138 S. Ct. 2206, 2223 (2018)

20 Appendix F, P-A37 wpsites.maine.edu/mlipa/2021/11/15/predicting-drug-diversion-the-use-of-data-analytics-in-prescription-drug-monitoring/

26 <https://Chicago.suntimes.com/columnists/2021/7/28/22597967>

B . STANDING

Whether or not Dr. Pompy is convicted of criminal acts beyond a reasonable doubt, convicted of criminal acts beyond a reasonable doubt, 2) whether or not Dr. Pompy's State of Michigan was properly suspended for 6 months and one day on 6/2/2020, 3) whether or not Dr. Pompy's DEA and X-DEA number were properly suspended, 4) whether an hearsay -based, involuntary PDMP (Prescriptions Drugs Monitoring Program) is admissible evidence, are irrelevant for the purpose of this action. The plaintiff suffered an injury in fact, the injury was actually and legally caused by the defendants, the court can redress the injury easily and with certainty, the plaintiff has standing. For a lawsuit to have Article III standing, a plaintiff must satisfy each of three elements: an injury-in-fact, that is fairly traceable to the defendant's allegedly unlawful conduct and that is likely to be redressed by the requested relief.

I. Injury-in-Fact – Battered Pain Syndrome

The defendants created a peril that they unconscionably seek to avoid in a court of law. The defendants, government agencies, who created a risk, are liable under 42 U.S . C § 1983 (*DeShaney v. Winnebago*).

The plaintiff suffers from continuous, repetitive, unnecessary pain and suffering, increased disability, decreased productivity, and suicidal thoughts. Such conduct violates the Eighth Amendment. The injury results from the lack of the defendants to set equivalent treatment alternatives. Her esteem and reputation in the community were lowered in the Monroe County due to her being a member of a group, readily identifiable with a physician facing a federal indictment. The plaintiff suffered the battered-pain syndrome.

Stroke

After 9/26/2016, the plaintiff encountered inadequate pain treatment. Her body was battered in pain. Poorly controlled pain excited and stressed the plaintiff to the point of suffering a stroke. The plaintiff did suffer severe limitation in strength and a decreased ability to walk as result of her stroke.

II. Causation and Redressability

But-for-the-lack-of appropriate pain treatment, the plaintiff would not have suffered the stroke. Unrelieved pain is known to cause many harmful effects, including high blood pressure, heart attacks and strokes. The defendant disregarded the high probability of a serious risks of the harmful effects of

unrelieved pain by their failure to ensure the existence of alternative full-time pain treatments in Monroe. It was foreseeable that the plaintiff's lack of care would lead to a stroke. As an actual and proximate result of the lack of care, the plaintiff suffered a particularized injury, namely a stroke. The court can redress the injury by remanding the case to the U.S District Court for discovery, depositions, trial and award of remedies.

III. Statutory and Prudential Standing

The plaintiff suffered an actual violation of her 14th Amendment liberty interest to medical treatments. The plaintiff was entitled to treatment as a matter of law under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., and the Affordable Care Act, 42 U.S.C. §18116, et seq. Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Hospital Accreditation Organization (JACHO) "pain as the 5th Vital Sign", EMTALA laws, and the Controlled Substance Act (CSA 802 (56)(c)). At all times relevant to this action, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, was in full force and effect in the United States. The Rehabilitation Act forbids programs or activities receiving Federal financial assistance from, among other things, discriminating against otherwise qualified

individuals with disabilities. Plaintiff is a qualified individual with disabilities within the meaning of the Rehabilitation Act. As chronic pain patient who has "a physical or mental impairment that substantially limits one or more major life activities."

The plaintiff is classified as disabled under the Americans with Disabilities Act, 42 U.S.C. §12101 The defendants are subject to the Americans with Disabilities Act, 42 U.S.C. §12101. Defendants are also subject to the Rehabilitation Act due to the fact that they receive Federal financial assistance from the United States Department of Health and Human Services, including Medicare provider payments from the centers for Medicare/Medicaid Services under Title XVIII, Part D of the Social Security Act, 42 U.S.C. §1395 et seq. Defendants, through their discriminatory practices towards the Plaintiff and the Class Members, based upon their disabilities, has violated and continues to violate the Rehabilitation Act by, *inter alia*, denying and /or impairing disabled individuals, including Plaintiff and other potential members of the Class Members, the full and equal goods, services, facilities, privileges, advantages or accommodations for their medical care in Monroe County.

Section 1557 of the Patient Protection and Affordable Care Act (“ACA”) (codified at 42 U.S.C. §18116) was established to combat healthcare discrimination by any health program, healthcare entity, or activity that receives federal funding. This Act of Congress makes it illegal to discriminate against individuals based upon their race, national origin, gender, age, or disability. Section 1557 of the ACA protects individuals from discrimination in any health program or activity of a recipient of federal financial assistance, such as hospitals, clinics, employers, retail community pharmacies or insurance companies that receive federal money. Section 1557 specifically extends its discrimination prohibition to entities that receive federal financial assistance in the form of contracts of insurance, credits, or subsidies, as well as any program or activity administered by an executive agency, including federal health programs like Medicare, Medicaid, and CHIP. 42 U.S.C. §18116, ADA Section 1557, provides in pertinent part as follows: (a) an individual shall not, on the ground prohibited under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or

under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 504, or such Age Discrimination Act shall apply for purposes of violations of this subsection.

Recipients of Federal financial assistance, such as Defendants, are particularly prohibited from providing “any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program.” See 45 C.F.R. §80.3(a)(ii). Federal financial assistance has been interpreted and enforced to cover a broad range of programs receiving federal funds. Defendant is subject to Section 1557 due to the fact that they receive Federal financial assistance from the United States Department of Health and Human Services, including Medicare provider payments from the centers for Medicare/Medicaid Services under Title XVIII, Part D of the Social Security Act, 42 U.S.C. §1395 et seq.

Dale Malone, Charles F. Mc Cormick, Brian Bishop, Marc Moore, William Paul Nichols, Robert Blair had final authority as to hiring, training, supervising, disciplining, and firing of employees. The above defendants had inadequate policy or a failure to distribute that policy to officers, DEA Task Force Officers, MANTIS. The respondents above owed the petitioner a duty of reasonable care, and a duty of special care due to their final authority as to hiring, training, supervising, disciplining, and firing. The above respondents failed to provide hiring, training, supervising, disciplining, and the firing of the officers. In *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197 (1989), inadequate or improper training of police officers is often the grounds for a failure to act claim brought under tort liability or a Section 1983 civil rights claim.

The above defendants had prior, actual or constructive knowledge, that James Stewart, aka James Howell, had a history of being an unreliable informant and multiple constitutional violations. A pattern of conduct, tantamount to a policy or custom, of deliberate indifference to the need for training to prevent the constitutional violation occurred. The deliberate indifference of the policy makers to the unreliability of James Stewart, is the actual and proximate cause of the injury to the plaintiff. The defendants have liability under *Monell*.

The deliberate indifference of the policy makers to the unreliability of James Stewart is the actual and proximate cause of the injury to the plaintiff. The defendants have liability under *Monell*. The causal nexus between the deliberate indifference of the policy maker, the failure or inadequacy of the training, and the constitutional violation satisfied the Monell elements. (*Monell v. Department of*

Social Services, 436 U.S. 658 (1978)) (pp. 70–71). The above respondents have a pattern of showing a pattern of constitutional violations is usually (but not always) necessary to put a municipality on notice that its training program is inadequate

C . MALICE

Hard drug addicts gets their heroin, cocaine, and illicit fentanyl from street dealer who do not report their illegal opioid drug dealing to the state, federal, and HFPP partners' PDMP databases. Where the majority of opioid drug overdoses result from illegal drugs, the representation by HFPP that PDMP can eliminate drug overdoses lacks basis in fact. A restriction of available medication based on the PDMP, only adversely impact the legal users of said medications. Malice is the knowing that a statement is false or acting with a reckless disregard for the statement's truth or falsity. The American Disability Act protects the disabled people. The plaintiff belongs to the class of disabled people that the statute was meant to protect. Acting under the color of law, the defendants disregarded the ADA with deliberate indifference as to the truth or falsity of the ADA. Such conduct of deliberate indifference to constitutional rights, in the absence of good faith, constitutes malice. But for the malicious acts, the plaintiff would not have been injured by a stroke. MANTIS and DEA surveillance would establish that the defendants knew, or should have known, of the plaintiff's impairment, pursuant to the ADA. The defendants knew or should have known that the plaintiff was

disabled. The defendants consciously, intentionally, recklessly disregarded the disability. Such behavior constitutes malice.

Qlarant, BCBSMMIC, IBC, BCBSA, GDIT) advertised their entry into: 1) traditional police of criminal investigation, 2) into governmental prosecutorial functions by coordinating the criminal conviction of physicians, 3) depriving of medical care people considered disabled and entitled at law to medical care under the ADA, 3) prevent the government from mitigating financial loss that arise from controlled substances prescription drug diversion. BCBSMMIC exceeded the limits placed on profits under the federal statutes ²¹. BCBSMMIC can both raise health insurance premiums while inducing criminal proceedings through HFPP and Qlarant. The criminal proceeding generates lucrative “other income” under an accounting scheme, via substantial restitutions, civil and criminal forfeiture. Prosecutorial misconduct results ^{19, 24}.

Under 42 U.S.C § 1983, malice, a custom or practice amounting to an official policy of the entity, resulting from reckless or deliberate disregard to clearly established constitutional laws negates

¹⁹-Neil Anand, et al v. U.S. Department of Health and Human Services, (Case No 1: 21- 01635 (D.C (2021). Doc 15-1. Filed 10-25-21. Page 42 to 48, of 67.

²¹-Neil Anand, et al v. U.S. Department of Health and Human Services, (Case No 1: 21- 01635 (D.C (2021). Doc 15. Filed 10-25-21. Page 28 of 31.

²⁴ .Malik v. City of New-York. (20-1969-cv) U.S Court of Appeals For the Second Circuit

the qualified immunity of local (Under Monell) and federal (Under Bivens)

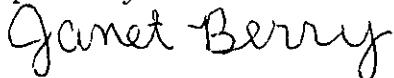
government employees, and their agents for the injury of the petitioner.

The Court of Appeals erred in its decision barring a claim under a § 1983 and or a Bivens Claim based on constitutional injury, arising out of a violation of the 4th Amendment. The petitioner is likely to prevail and having the fruits of the poison tree returned to the petitioner, and the case remanded for determination of damages owed to the petitioner.

CONCLUSION

The Petitioner for a Writ of certiorari should be granted, the order of the Sixth Circuit Court of Appeals vacated, and the case remanded to the District Court, Eastern District of Michigan.

Respectfully Submitted



November 17, 2021

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