

No. \_\_\_\_\_

**21 - 6535**

In The

Supreme Court of the United States

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Jennifer Lynn Smith

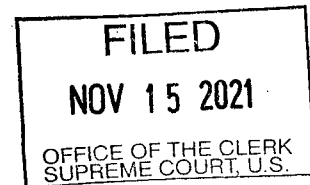
Petitioner,

**ORIGINAL**

V.

William Paul Nichols et al

Respondents,



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On Petition For Writ of Certiorari To The United States Court of  
Appeals for the Sixth Circuit Court of Appeal (19-2207)

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**PETITION FOR A WRIT OF CERTIORARI**

**In Forma Pauperis**

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Jennifer Lynn Smith, pro se

10765 ELMHURST ST

P.O BOX 157

LUNA PIER, MI 48157

734-430-6202

## QUESTIONS PRESENTED

I .Does forgery, drug distribution, perjured affidavits, defective extraterritorial search warrants, improper execution of search warrants, coupled with violation of :  
1) the 4<sup>th</sup> Amendment, 2) the “Patient Rights Statute ( MCLA 333.20201)”, 3)  
“Federal Privacy of 1974, 5 USCA 552a (1988), 4) 15 U.S.C.§ 6821 (( Obtaining  
and soliciting customer information of a financial institution under false pretenses),  
5) State of Michigan and New-Jersey rules regarding extraterritorial warrants,  
and 6) Article 1 §11 of the State of Michigan Constitution Michigan constitute a  
cause of action for a § 1983 claim under Monell, and /or Bivens for a constitutional  
injury ?

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## LIST OF PARTIES

JENNIFER LYN SMITH , 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,

CHRISTENSEN CARL MD. PH.D  
 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. McCORMICK 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  
 MICHIGAN BUREAU OF PROFESSIONAL LICENSING PHYSICIAN EXPERT  
 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

2 . 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.

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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

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## 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 NO. 190000000755

THE STATE OF MICHIGAN and BCBSM..... P17

## OPINIONS BELOW

Petitioner Jennifer Smith moves pro se, from a Final Order of Reconsideration from the Sixth Circuit Court of Appeals, dated June 30, 2021<sup>1</sup>. 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<sup>3</sup>. In the aggregate, BCBSMMIC, along with other franchisees of BCBSA (Blue Cross Blue Shield Association), substantially interfered with the insurance premium for health care.

An unlawful search and seizure exists, and coerced visits of patients by law enforcement without counsel occurred<sup>7</sup>. 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 4<sup>th</sup> Amendment, the American Disability Act, Monell, and a Bivens Claims<sup>2</sup>.

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1-Appeal No. Case No. 19-2207

2- 2:18-cv-12634

3-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)

7- Tracy Clare Micks Harm, et al v. William Paul Nichols et al, Consolidated case. 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 Prohibition<sup>9</sup>. 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 <sup>14</sup>.

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.

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<sup>9</sup> *Tumey v. Ohio*, 273U.S 510 (1927)

<sup>14</sup> [https://end-overdose-epidemic.org/wp-content/uploads/2021/09/AMA-2021-Overdose-Epidemic-Report\\_92021.pdf](https://end-overdose-epidemic.org/wp-content/uploads/2021/09/AMA-2021-Overdose-Epidemic-Report_92021.pdf). 10/03/2021



## 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 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

#### STATEMENT OF FACTS

In 2013 and under the authorization of the franchisor Blue Cross Blue Shield Association (BCBSA), BCBSM was absorbed by a Mutual Insurance Company incorporated in the State of Michigan, Blue Cross Blue Shield of Michigan Mutual Insurance Company (BCBSMMIC). Blue Cross Blue Shield of Michigan (BCBSM), a domestic nonprofit healthcare corporation, merged with Blue Cross Blue Shield of Michigan Mutual Insurance Company (BCBSMMIC), the surviving company, on December 31, 2013. The merger produced unreasonable anticompetitive effect in the Michigan Health Care Market. The larger and better capitalized created new barriers to entry that persuaded other health insurers to stop competing. Senator

Hune provided the mechanism for changing from the non-profit BCBSM to for profit BCBSMMIC. Under a legal duty to pay \$1.56 billion over 18 years to a Michigan Health Endowment Fund. Qlarant Solution Inc. ( formerly Qlarant Medic ), General Dynamics information technology, Medicare “Pill Mills” analysis , Blue Cross Blue Shield of Michigan Mutual Insurance Company (BCBSMMIC), Blue Cross Blue Shield Association, Independence Blue Cross, among other private companies, have intertwined themselves, as state actors, with the DEA, OIG, CMS, Medicare , Medicaid, MANTIS ( Monroe Area Narcotic Team Investigation Service), Monroe County Sheriff’s Department , Michigan State Police, and the FBI in prospective criminal investigations. The above name private parties have advertised their entry into: 1) traditional police of criminal investigation, and 2) into governmental prosecutorial functions by coordinating the criminal conviction of physicians. A public/private partnership named HFPP ( Healthcare Fraud Prevention Partnership) , selects physicians based on age, assets owned, 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. 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 <sup>15</sup> for profits<sup>17</sup>. 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). Blue Cross addressed the public at large via Gill Gembarsky, via a statement of intent to induce justifiable reliance that their opioid software had the ability to detect “Pre-crime.” Such representation by BCBSMMIC constitutes an express warranty of goods under UCC §2-313. Qlarant Solution Inc., advertises to federal and state attorney generals that Qlarant can “strengthen conviction” of parties for selective prosecution. 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 <sup>14</sup>. The Petitioner alleged: 1) Improper search and seizures based on facially defective extraterritorial search warrants, 2) DEA diversion Investigator Brian Bishop represented a State of Michigan criminal investigation as a DEA Administrative Audit of Suboxone Patients privileged under of 42 C.F.R §§ 2.61-2.67, performed a search and seizure in violation of 42 C.F.R §§ 2.61-2.67.

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

15 Neil Anand, et al v. U.S. Department of Health and Human Services et al. (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>’.

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). The software lacks safeguards for Mistakes in the data, or misinterpretation of the data is Qlarant and BCBSMMIC represented in their advertisement, which they knew with substantial certainty that the software would substantially interfere with medical treatment of patients considered disabled under the ADA. Opioids Medications are used by chronic pain patient pursuant to their liberty interest in living life in a pain-neutral environment. Qlarant and BCBSMMIC product affected doctors and patients disabled by pain, in a manner different that suffered by the general public.

Many other physicians suffered a similar loss of medical licensure. Facing the lack of medical care or alternative reliable efficacious treatment, the affected class of patients have often died, (e.g., Richard Johnson, Janet Loruss, Renay Blakesley, Joshua Cangliosi, Marie Brown, Rochelle Basinger, Brandon Nichols), 2) others have sought refuge in illegal drugs, 3) still others have suffered from worsening pain and suffering, depression, anxiety, disability. A Software intended to coordinate criminal convictions of doctors, using a medical malpractice evidentiary standard of evidence without the mens rea of actus rea of a crime, is not reasonable. The software was used by BCBSMMIC's employee Carl Christensen M.D to compete against Dr. Pompy. BCBSMMIC uses the Prescriber Block Analysis software and the HFPP, among its anticipative strategies, to : 1) control insurance premium in the health care market, and 2) ration health distribution to the

disabled by inducing reliance by law enforcement to begin criminal proceedings against physicians. In 2015, Pursuant to Operation Stonegarden and Operation Gateway, the militarized police team MANTIS (Monroe Area Narcotic Investigation Team), Monroe City Police and the Monroe County Sheriff's department received a grant from the Drug Enforcement Agency.

Under the terms of the grant, the parties receiving the grant money entered into an agreement to search for drugs. In November 2015, Monroe Prosecutor William Paul Nichols, Marc Moore of Mantis, Michaels Zsenyuk or Brian Zasadny of Blue Cross Blue Shield Mutual Insurance Company (BCBSMMIC) , MANTIS ( formerly the disbanded OMN I ) entered in to an agreement, with the intent to investigate a physician member of the suspect class, by an informant who ingested controlled substances that the informant was investigating, by using false State of Michigan Driver's license, by using false social security card number, by using medical data that lacked medical necessity from a bona fide doctor/patient relationship.

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The above named group formed a joint enterprise with the common purpose of exploiting the grant, pecuniary gain from Civil Forfeiture, (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) , coordinating their efforts for cash conviction, in violation of *Tumey*.

Dr. Pompy provided medical care for : 1) the treatment of chronic pain in patient of the status of disabling chronic pain under the ADA, and 2) the treatment of patients of the social status of drug addiction.

Despite being under treatment for substance use, the personal identification data of patients undergoing drug treatment was used to find, and interrogate those patients. The members of the joint enterprise inserted James Stewart, aka James Howell, into the medical practice of Dr. Pompy without a court order, as required under Title 42 C.F.R. §§2.61-2.67.

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 . James Stewart, aka James Howell, committed mail and wire

fraud for the joint enterprise when he signed under the name James Stewart, urine specimen destined to be sent by U.S. mail to a lab outside the state of Michigan. 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.

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. In violation of Gramm Leach-Bliley Act § 501, Robert Blair re-used the financial information used in search warrants issued on 9/23/2016, 8/14/2017, and 5/23/2018 to obtain the personal information of the treating physician related to the petitioner.

On 9/23/2016, Magistrate Jessica Chaffin, under the authority of Jack Vitale, relied on false statement in the affidavit by James Stewart, aka James Howell, Sean Street, Marc Moore, and Robert Blair, to issue a search warrant for the medical records of Dr. Pompy, housed by IPatientCare Inc. The 9/23/2016 search warrant did not list IPatientCare Inc., in particularity as a place to be searched and seized.

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. 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. Under a pretextual DEA Administrative inspection, on September 26, 2016 early morning, Brian Bishop and Marc Moore, search and seized and later interrogated patients undergoing substance abuse treatment. Later that day, On September 26, 2016, Brian Bishop, Mark Moore, Robert Blair, and about 18 others officer raided my doctor's office at Promedica Monroe Regional Hospital. 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 Knight<sup>5</sup>. Potential conflict of interest <sup>18,19,21</sup>, liability<sup>12</sup> for inadequate or improper training of police officers support a finding for punitive damages.

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

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/>

19 <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=IwAR0eEqqnSg6-5WVBv473MEUFXTT3ERM3V4J80l4LJZELPYhw17BaV5zPUsY...>



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. 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.

he 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 1<sup>st</sup> 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 I 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.

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 1<sup>st</sup> 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 profess to acquire, disclose, redisclosed, maintain, and dispose medical records, without consent, privilege, or 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.

In early 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.

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.).

. 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

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.

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.

Here the ADA was violated. The ADA ( American Disability Act) provides for no absolute nor qualified immunity for its violation.

*In Portfolio Recovery Associates LLC v Lesly Pompy* , Case No 20G 1162 GC Mich. 1<sup>st</sup> 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).

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*<sup>6</sup>, the search warrants for the petitioner's PDMP and medical records represent structural errors, such that the search warrants and unlawful contracts<sup>20</sup> must be vacated.

### **B. The State Court Proceedings**

Without resolving the case, summary disposition was granted to the Monroe City Police<sup>1</sup>. Despite conflict of interests<sup>15</sup>, Bureau of Professional Licensing and the Federation of Medical Boards<sup>16</sup> ratified the unconstitutional acts.

### **C. The District Court Proceedings**

Acts constituting deliberate indifference to constitution rights occurred<sup>12</sup>. 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. The case was improperly dismissed, since the petitioner is likely to prevail on the merits.

1 . Tracy Clare Micks Harm, et al v. William Paul Nichols et al, Consolidated cases 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)

12 Tracy Claire Micks Harm, et al v. William Paul Nichols, et al. (Consolidated: 19-2173, U.S. Court of Appeals, FOR THE SIXTH CIRCUIT. Document 61. Filed 10-21-2020. P9 -11.

15 <https://detroit socialist.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

20 CONTRACT NO. 190000000755 THE STATE OF MICHIGAN and BCBSM

## REASONS FOR GRANTING THE PETITION

### STANDING

Whether or not Dr. Pompy is: 1) convicted of criminal acts beyond a reasonable doubt, 2) whether or not Dr. Pompy's State of Michigan medical license 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 a hearsay-based, involuntary PDMP (Prescriptions Drugs Monitoring Program) is admissible evidence, are irrelevant for the purpose of this action. Pursuant to *Carpenter v. United States*, 138 S. Ct.2206 (2018), the Third-Party Doctrine for disclosure of privileged information involuntarily gathered by the government from a service provider, does not apply. 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.

#### **I. Injury-in-Fact – Battered Pain Syndrome**

The plaintiff suffers from continuous sitting standing lifting impairment, unnecessary sharp shooting burning disabling pain and suffering from Disc disease. The worsening nature, extent, and frequency of the pain and suffering is the actual and proximate cause of the petitioner's: 1) increased debilitating



disability, 2) decreased productivity and quality of life, 3) being doomed to long-term permanent disability, and 4), loss of opportunity to receive medical care resulting from the of medical abandonment, 5) loss of ability to enjoy life from aggravation of chronic pain and suffering. The acts of the respondents constitute cruel and unusual punishment. A clear violation of the Eighth Amendment occurred. The injury results from the lack of the defendants to set equivalent treatment alternatives. Her esteem and reputation in the community was lowered in Monroe County due to her being a member of a group, readily identifiable with a physician facing a federal indictment. Title II of the American Disability Act provides that no disabled person can be excluded from participating in or getting the benefits of any "services, programs or activities of a public entity," or be discriminated against by such an entity.

Qlarant Solution Inc. and BCBSMMIC intended, and obtained reliance by the consumers of the software. The consumers of the products, including MANTIS, DEA, and other law enforcement, relied on representation of the software to predict the commission of crime by patients and doctors. Qlarant and BCBSMMIC represented in their advertisement, which they knew with substantial certainty that the software would substantially interfere with the use of Opioids medications. Opioids Medications are used by chronic pain patient pursuant to their liberty interest in living life in a pain-neutral environment. Qlarant and BCBSMMIC product affected doctors, involved in the treatment of pain, in a manner different that suffered by the general public. The software product is used to generate

probable cause to induce criminal proceedings via an improper standard of evidence. The software uses a plausibility evidentiary standard that misrepresents the statutory, beyond a reasonable doubt, criminal evidence standard.

## **II. Causation and Redressability**

But-for the lack of appropriate pain treatment, the plaintiff would not have lost the opportunity for pain control. Unrelieved pain is known to cause many harmful effects, including impaired activities of daily living, aggravation of pain and suffering, causation and/or aggravation of disability. The respondents disregarded the high probability of 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 such degraded health. As an actual and proximate result of the lack of care, the plaintiff suffered a particularized injury, namely the loss of adequate pain control. 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 petitioner suffered: 1) an actual violation of due process, 5<sup>th</sup> and 14<sup>th</sup> Amendment, as to liberty interest to medical treatments , 2) an unlawful search and seizure under the 4<sup>th</sup> Amendment as to possessory interest in his digital medical records and PDMP data. Also, 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 5<sup>th</sup> Vital Sign,” EMTALA laws, Human Rights Under Article 32 of the 1949 Geneva Convention IV. A duty to treat patients afflicted with chronic pain and/or addiction, is established under Federal Law, the American Disability Act, as well as the Drug Addiction Treatment Act of 2000 (Data 2000). The final decision makers failed to properly, train, educate, supervise, regarding privileges and duties under the ADA. Under *Clipper v. Takoma Park, Maryland*, F76 F 2d 17 (4<sup>th</sup> Circ. 1989), the defendants can be held liable for inadequate training coordinated by the County.

Patients were diagnosed with chronic painful diseases or opioid use disorders and thus these diagnosed diseases are physical and mental impairments that substantially limits one or more major life activities which include the operation of major bodily functions. 28 C.F.R. § 36.105 (b)(2) defines physical and mental impairment to include drug addiction. Opioid Use Disorder (OUD) substantially limits major life activities including care for oneself, learning, concentrating, thinking, remembering, and communicating. 42 U.S.C. §12102 (2)(A). OUD also limits the operation of major bodily functions such as neurological and brain functions. 42 U.S.C. §12102 (2)(B). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that

ameliorating measures including medication may have on the impairment. 42 U.S.C. §12102 (4)(E)(i). Accordingly, persons with OUD are individuals with a disability within the meaning of 42 U.S.C. §12102 and 28 C.F.R. § 36.104 and covered by the ADA's protections. Plaintiff brings civil action in federal court under Negligence Per Se, Malum In Se, and Illegal Per Se doctrines against Defendant for damages to Plaintiff and his patients as well for issues of general public importance as Defendant is engaged in a pattern or practice of discrimination in violation of the ADA by using illegal data analytics models that impose discriminatory eligibility criteria that screen out individuals with disabilities on the basis of their disabilities in violation of the ADA. Defendant BCBSMMIC is interfering with a physician's duty to treat and denying patients who are suffering from chronic pain or OUD from the opportunity to equally participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations being offered on the basis of disability in violation of 42 U.S.C. §12182(b)(1)(A)(i) and 28 C.F.R. § 36.201 and in violation of Title II AND III of the ADA 42 U.S.C. §12182 et seq. and its implementing regulation, 28 C.F.R. Part 36.

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 a 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 grounds 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.

#### IV . Product Liability –Bystander Liability

BCBSMMIC, BCBSM, BCBSA, HFPP, GDIT, IBC, Qlarant Solutions (previously Qlarant Medic) – manufactured, retailed, or sold an opioid monitoring software.

The software is not materially altered by other manufacturers or retailers of the product. A reasonable consumer would not expect the software to characterize physicians whose prescriptions of controlled substances are of average strength, to be labeled to be labelled as a pill mill. A software product that labeled a physician of average prescribing habit as a pill mill, would be considered be a defective product. A person consider disabled under the ADA or the Drug Addiction Treatment Act of 2000 (Data 2000) under SAMSHA, would not reasonably expect that his health insurance company would target his physicians to criminal proceedings. The opioid monitoring software is considered defective. The disabled patients, deemed disabled by virtue of the status of their chronic medical problems, have no near-term reasonable expectation of a medical cure for their chronic disease. As such, the patients generally hold long term doctor/patient relationship over the long period of time of being afflicted with the disease. An attack on the physicians of the disabled patients, would foreseeably cause personal injury by

adversely impacting access of health care of the disabled patients. The petitioner represents such a patient. Strict liability can be applied to anyone whose contact with the defective product was foreseeable.

The weaponized criminalization of medical care: 1) violates the 8<sup>th</sup> Amendment against cruel and unusual punishment, and 2) destabilizes the public trust such that Public Policy is adversely affected. For example, the current battle over the off-label use of COVID-19 vaccine for the prevention of COVID-19 is the result to the destruction of the public trust. Patients are less likely to trust a physician in a large, anonymized hospital or medical group.

The Petitioner has standing based on a foreseeable plaintiff in an action under a basis for product liability.

The state has a legitimate BCBSMMIC, BCBSM, BCBSA, HFPP, GDIT, IBC, Qlarant Solutions have not shown that the inducing of criminal proceedings against physician prescribers of controlled substances, or allowing the physician the use his education, experience, and training in the provision of controlled substances for the treatment of pain, substantially interfere with the overdose death rates from opioids. IBC is a commercial supplier of opioid monitoring software of physicians AND their patients. As a patient of a pain physician who prescribed controlled who is monitored by respondents, the petitioner was a foreseeable plaintiff.



The software product of BCBSMMIC, BCBSM, BCBSA, HFPP, GDIT, IBC, Qlarant Solutions the monitors the prescription of controlled substances, The software is held itself out, so to predict physicians who illegally prescribe controlled substances with the intent of diversion. The software holds itself out to predict criminal activity no matter if the crime is a general intent crime, a specific intent crime, a malicious crime, or a strict liability crime. The software lacks ability to determine consent, privilege, and other possible defenses to allegations of overprescribing. The software omits the dispensing “pharmacies duties” under the pharmacy’s corresponding responsibility” under C.F. R. §1306. 04 (a), the health insurer’s own prior authorization process, and the TIRF REMS program. The disease state of the patients to whom the physicians prescribed was not considered. DEA, FBI, local narcotic teams, state and local police enforces the Controlled Substance Act. Law enforcement relied on the representation made by IBC. The representations made by IBC are not in accordance with facts based on specific causation. As prescribers of controlled substances, physicians are foreseeable plaintiffs for torts arising caused by the dangerous software. The statutes of the Controlled Substances Act poorly described the specific elements that constitute unlawful prescribing of controlled substances.

BCBSMMIC owed a duty not to sell a product so defective so be become unreasonably dangerous. The defect in the opioid monitoring software is so dangerous as it allow general causation, and not specific causation, to be used as probable cause to induce criminal proceedings against a physician. In a medically

underserved area such Monroe County, patients such as the petitioner would face substantial interference to access to medical care. The data output from the defective software was the actual and proximate cause of the harm of the petitioner. BCBSA, BCBSMMIC warranted the reliability of the software to law enforcement. The aiming of the disabling effect of the defective software toward physicians located in the zone of danger, i.e physicians involved in the care of patients facing impairments such to be classified as disabled, violated the ADA. Under either a “but-for” or a substantial factor test, IBC’s software is an actual cause of the harm caused to the plaintiff. Based on a theory of strict liability, IBC is strictly liable to the damages suffered by the plaintiff that arose from the defective software. Under strict duty is owed to those in privity, those not in privity, and even to foreseeable bystanders. IBC is strictly liable to the defective software product, regardless of whether IBC’s conduct was reasonable.

The petitioner suffered personal injury (anxiety, fright, insomnia, hyperhidrosis, flashback of pain and severe emotional distress.

## V. Zone of Danger

The petitioner was a patient of, in a privileged doctor/patient relationship, and thereby associated with Dr. Pompy on the day of the raid of 09/26/2016. The petitioner heard of many patients of Dr. Pompy who were visited under fear or force, by the DEA, MANTIS, and the MSP. The petitioner was fearful for his own, and his family’s safety. Him and his family were under direct physical threat to for

a coerced visit by law enforcement. The petitioner was in the zone of danger. The zone of danger included all people who were Dr. Pompy's patients. The petitioner has associational and zone of danger standing.

## QUESTIONS PRESENTED

### ARGUMENT SECTON

Suffering from the undue burden on the receipt on medical care entitled under the law, The petitioner seeks judicial review. As a matter of law, the plaintiff is entitled to judicial review under both a strict scrutiny and a rational basis for judicial review. 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 5<sup>th</sup> Vital Sign," EMTALA laws, and the Controlled Substance Act (CSA 802 (56)(c)), the petitioner was entitled to medical care.

#### The Question Presented:

I . Does forgery, drug distribution, perjured affidavits, defective extraterritorial search warrants, improper execution of search warrants, coupled with violation of :  
1) the 4th Amendment, 2) the "Patient Rights Statute ( MCLA 333.20201)", 3) "Federal Privacy of 1974, 5 USCA 552a (1988), 4) 15 U.S.C.§ 6821 (( Obtaining

and soliciting customer information of a financial institution under false pretenses),  
 5) State of Michigan and New-Jersey rules regarding extraterritorial warrants,  
 and 6) Article 1 §11 of the State of Michigan Constitution Michigan constitute a  
 cause of action for a § 1983 claim under Monell, and /or Bivens for a constitutional  
 injury ?

A. 42USC § 1983 provide for a remedy for constitutional injuries caused by  
 State government employees under Monell, and for federal government under  
 Bivens. The presence of malice and or the deliberate disregard or clearly  
 established laws, negate qualify immunity.

#### 1 . Strict Scrutiny Basis for Judicial Review

Strict Scrutiny basis is a judicial review is indicated where a fundamental right has  
 been violated. The Fourth Amendment of the United States constitutions represents  
 a clearly established law, that assigns fundamental possessory rights to the  
 petitioner.

The plaintiff had a fundamental in the possessory interest of her chart. A joint  
 enterprise, acting under the color of law, comprised of Blue Cross Blue Shield of  
 Michigan Mutual Insurance Company ( " BCBSMMIC ) , Blue Cross Blue Shield  
 Association ( BCBSA ), among others, participated, funded, aided , abetted,  
 encouraged an illegal search and seizure of the plaintiff's medical records. Where  
 reasonable expectation of privacy existed in the medical records, the improper  
 search and seizure constitute a violation the 4<sup>th</sup> amendment. The 4th Amendment

The Secretary of State of the State of Michigan gave a false state of Michigan driver's license. Armed with false driver's licenses, terrorists can board airplanes and carry on September 11 -style terrorist attacks. For this reason, the Homeland Security Act prohibits the use of false state-issued driver's licenses that can be used to board planes. 09/2011 is a grim reminder of the potential for terrorists to use false documents to unleash chaos, death, and destruction. James Stewart, aka James Howell, is an unreliable former police officer, who was hired by Blue Cross Blue Shield of Michigan Mutual Insurance Company, MANTIS (Monroe Area Narcotic Team Investigative Service), and the DEA. A perjury occurred when he signed the initial visit, pain questionnaire document, documenting that he was in pain. James Howell committed mail and wire fraud when he signed, under the name James Stewart, urine drug screens destined to be sent by U.S. mail. He forged federal and State documents, so he could fill prescriptions at a Monroe Walgreen, and ingest controlled substance evidence. The Bureau of Professional Licensing gave James Howell a forged MAPS report that aided and abetted his drug use.

### 3 . Drug Distribution

Blue Cross and Marc Moore allowed James Howell to fill prescriptions for controlled substances at Monroe Walgreen (1125 N. Monroe St). James Howell used the pain medications while declaring under oath, that he gave his pain medications to Marc Moore. James Howell's pain pills are missing and unaccounted for.

### 4 . Broken Chain of Custody

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.

##### 5 . Defective Search Warrants

Among the defects of the 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 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 4/26/2018 by Michael Hendricks.

Pursuant the “Patient Rights Statute (MCLA 333.20201)”, the Health Care Portability and Accountability Act (HIPA), the 4<sup>th</sup> 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.

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 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. 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. Issued on 8/14/2017 by Magistrate Jessica Chaffin, 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 appear 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 Monroe Michigan First District Court purposefully issued jurisdictionally defective

Michael Hendricks of HHS /OIG used the same perjured affidavits to obtain the plaintiff's medical records from Brian Bishop on 5/26/2018. Those same medical records, that Brian Bishop got from New Jersey using the Michigan 9/23/16 forged, third-party, extraterritorial warrant. The same medical records that Michael Hendricks had in his possession since 4/23/2018. DEA agent Bishop was required under 18 U.S. Code 983 (a) (1) (A)(iv) to put the innocent owners on notice within 90 days after the date of the seizure by the State or local law enforcement agency on September 26, 2016. After the end of the search DEA Agent Brian Bishop illegally brought to his office the seized property of innocent owners: Electronic devices, Plaintiffs medical records, and other patients'.

A New Jersey judge never approved the Michigan warrant to be used in the state of New Jersey. The Michigan warrant was void in the State of New Jersey. Despite those material inconsistencies on government documents, the federal prosecutors, Matthew Schneider, Brandy McMillion and Wayne Pratt, disregarded the perjured affidavits, obtained my medical records from Brian Bishop. The use of the Michigan warrant in the state of New Jersey violated Interstate Commerce Clause.

"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).

The petitioner has encountered an undue burden in the receipt of medical care arising from a classification scheme using Medical Status- Based Discrimination. The private parties acting as state actors, and governmental actors have denied the petitioner the opportunity to compete in her receiving of medical care on a medical status-neutral basis. Section 1557 of the Patient Protection and Affordable Care Act (“ACA”) (codified at 42 U.S.C. §18116) prohibits discrimination by any health program, healthcare entity, or activity that receives federal funding. The Congressional intent of the ACA makes it illegal to discriminate against individuals based upon their race, national origin, gender, age, or disability.

## 7 . Undue Burden

Patients were diagnosed with chronic painful diseases or opioid use disorders and thus these diagnosed diseases are physical and mental impairments that substantially limits one or more major life activities which include the operation of major bodily functions. 28 C.F.R. § 36.105 (b)(2) defines physical and mental impairment to include drug addiction. Opioid Use Disorder (OUD) substantially limits major life activities including care for oneself, learning, concentrating, thinking, and communicating. 42 U.S.C. §12102 (2)(A). OUD also limits the operation of major bodily functions such as neurological and brain functions. 42 U.S.C. §12102 (2)(B). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that ameliorating measures including medication may have on the impairment. 42 U.S.C. §12102 (4)(E)(i). Accordingly persons with OUD are individuals with a disability within the meaning of 42 U.S.C. §12102 and 28 C.F.R. § 36.104 and covered by the ADA’s protections. The Respondents engaged in a pattern or practice of discrimination in violation of the ADA by using illegal data analytics models that impose

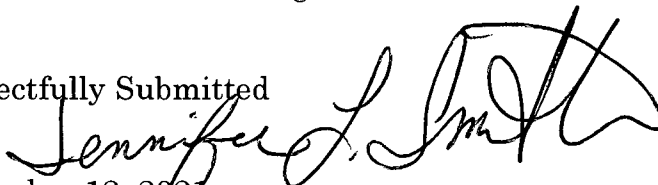
discriminatory eligibility criteria that screen out individuals with disabilities on the basis of their disabilities. Many patients continue to die.

The petitioners substantially interfered with a physician's duty to treat and by denying patients who are suffering from chronic pain and /or or OUD ( Opiod Use Disorder) from the opportunity to equally participate in, or benefit from the goods, services, facilities, privileges, advantages or accommodations being offered on the basis of disability. Such represent a violation of 42 U.S.C. §12182(b)(1)(A)(i) and 28 C.F.R. § 36.201, and in violation of Title II AND III of the ADA 42 U.S.C. §12182 et seq. and its implementing regulation, 28 C.F.R. Part 36. The interference has placed an undue burden on the disabled, such as the petitioners, and 2) substantially interfered with Interstate Commerce by engaging in anticompetitive practices.

### 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 12, 2021

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