

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

IN THE

SUPREME COURT OF THE UNITED STATES

Tracy Clare Micks-Harm — PETITIONER  
(Your Name)

William Paul Nichols, et al. vs.  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals - 6<sup>th</sup> Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tracy Clare Micks-Harm  
(Your Name)

1840 Bayview Drive  
(Address)

Monroe, MI 48161  
(City, State, Zip Code)

734.659.6383  
(Phone Number)



## QUESTIONS PRESENTED

I . Does malice, retaliation, deliberate indifference to the constitutional rights, acts committed within the scope of administrative function, acts committed within the scope of proprietary functions negate immunity privileges under HIPAA, absolute immunity, judicial immunity, or qualified immunity?

II . Whether *Carpenter* applies to the search and seizure of the petitioner's PDMP data, medical records, and personal identifier data, where that data is involuntarily held by a third party?

## LIST OF PARTIES

TRACY CLARE MICKS HARM, 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

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Petitioner Tracy Clare Micks Harm 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.

A pretextual search and seizure occurred twice on 09/26/2016<sup>7</sup> 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. Appendix "F" (The PDMP: Raising Issues in Data Design, Use and Implementation. Terri Lewis. )and G (Predicting Drug Diversion: The Use of Data Analytics in Prescription Drug Monitoring. Cathleen London)" are enclosed.

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1-Appeal No. Case No. 19-2209

2- 2: 18-cv-12634

7- . 2:18-cv-12634 E.D Michigan. ECF 37-1. 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. 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.

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, and was entitled to, privacy in her medical records, PDMP data, and personal identification data. Despite knowing the lack of jurisdiction <sup>31</sup> over the State of New Jersey and Florida and false statements in the supporting affidavit, the Michigan First District Court issued a search warrant that caused an unlawful search and seizure of the petitioner's possessory interest in her medical records occurred in the state of New Jersey.

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31 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16.

On or prior to 6/28/2018, Brandy McMillion, Wayne Pratt, Matthew Schneider used the improperly acquired medical records from the 9/23/2016 search warrant (Case 2:18-cv-13206-DPH-RSW ECF No. 20 filed 11/16/18 PageID.193 Page 3 of 5), then disclosed the medical records to a grand jury so to obtain a federal indictment. The medical records are in controversy in the present criminal investigation, and in the 6/28/18 federal indictment of Dr. Pompy. The resulting constitutional violations, led to litigation, Tracy Clare Micks Harm et al vs. William Paul Nichols et al. Consolidated cases 2.28-cv-12634), for which, the Civil Rights Activist, Mr. Hall initially acted as a process server. And now, due to retaliation, has been added to the current case.

The Petitioner filed a timely filed this petition. 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.

#### **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)

MCL 691.1407

## **I. STATEMENT OF THE CASE**

### **A . Facts Giving Rise To This Case**

BCBSMMIC ( Blue Cross Blue Shield of Michigan Mutual Insurance Company),BCBSM (Blue Cross Blue Shield of Michigan), BCBSA ( Blue Cross Blue Shield Association, 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 obtain invalid search warrants on 9/21/2016, 9/27/2016, February 2018 and 5/23/2018. The members of the joint enterprise created by the defendants, intruded into the corporate practice of medicine, and 2) codified their actions via the partnership in the HFPP ( Health Care Fraud Partnership) without substantial and procedural due process safeguards. The

intrusion occurred primarily in the medical offices of African Americans doctors and not the offices of the white doctors.

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.

James Stewart aka James Howell, a BCBSMMIC employee, presented to a medical office with a medical referral from BCBSMMIC employee J. Alan Robertson MD. He filled out a new patient pain questionnaire. James Stewart aka James Howell indicated that the intensity of the pain he experienced was at 9/10. Relying on the representation of pain made by James Stewart, he obtained admission into a medical office offering medical treatment related to pain and addiction. James Stewart aka James Howell lacked the court required under CFR 42 § 2.61-2.62. He videotaped patients undergoing substance abuse treatment without consent, privilege, or notice. James Stewart concealed the fact that his status as an informant employed by BCBSMMIC, working under the direction and supervision of Marc Moore of MANTIS, Brian Bishop of the DEA.

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.

In violation of Gramm Leach Bliley, 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, her doctor's medical license , and the petitioner's PDMP ( Prescription Drug Monitoring Program ) data. The petitioner has not voluntarily consented to the use of her PDMP data.

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., 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 4<sup>th</sup> 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.

Among the 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. In violation of Article 3 of the United States Constitution, the Judiciary branch and the law enforcement branch of government were not acting independently.

Dale Malone, William Paul Nichols, Charles F. McCormick, Marc Moore, Brian

Bishop had final authority as to hiring, training, supervising, disciplining, and firing. The above defendants had inadequate policy or a failure to distribute that policy to Officers Robert Blair, DEA Task Force Officers, Monroe County Sheriff's department, Monroe City Police, Monroe Vice, Michigan State Police, and MANTIS among others. Dale Malone, William Paul Nichols, Charles F. McCormick , Marc Moore, Brian Bishop owed the plaintiff a duty of reasonable care, and a duty of special care due to their final authority as to hiring, training, supervising, disciplining, and firing. Dale Malone, William Paul Nichols, Charles F. McCormick, Marc Moore, Brian Bishop failed to provide adequate hiring, training, supervision, disciplining, and the firing of the officers. As a result of the inadequate training, a defective warrant led to a constitutional injury from a violation of the 4<sup>th</sup>, 5<sup>th</sup>, and 8<sup>th</sup> amendment.

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. Evidence of improper issued search warrants on 9/23/2016 and 8/14/17 search warrant include: 1) lacked a court transcript, 2) lacked the caption and seal of the issuing court, in violation of a violation of MCL 780.651, 3) lacked a notarized signature to prevent perjury, 4) supported by false statement in the affidavit by Robert Blair, Sean Street, James Stewart, D 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., in violation of MCL 780.657 7) Personal jurisdiction over the New Jersey Citizen, IPatientCare Inc., 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, 12) IPatientCare Inc. was not listed in particularity as a place to be searched and seized, 13) lack of the court order necessary under 42 CFR §2.61-2.67, prior to the insertion of undercover agents, such as James Stewart, in a drug treatment facility, such as Dr. Pompy's office, 14) violation of court rules, of the state of Michigan and New-Jersey, regarding the use of extraterritorial search warrants, 15) diversity, personal, and subject matter jurisdiction defects, 16) proper service of process, opportunity to be heard and due process was not given in violation of Interventional Pain Management Associates property rights, 17) improper court tabulation of evidence authenticated by the evidence technician, 18) improperly executed an extra territorial warrant despite the prohibition against extraterritorial warrants under state of Michigan M.C.L §600.761 and of New-Jersey Court Rules RULE 3:5-1, 19) specific causation that the treating physician caused a rate of addiction, above and beyond, the prevailing rate of addiction in the community is lacking, 20) inconsistent time/ date stamp on the search warrants and the execution of the warrants, 21) absence of neutral detached magistrates and judge, 22) failure to abide by State of Michigan HIPAA statutes as required in the Statements of Works (SOW).

. In violation of Article 3 of the United States Constitution, the Judiciary branch and the law enforcement branch of government were not acting independently. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale acted outside the jurisdiction of their Monroe Michigan First District Court. 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 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 or qualified immunity.

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

Initially the plaintiffs in a related case, filed the complaint in the Michigan First Circuit Court. The United States Attorney Generals removed the case from state to the United States District Court, Eastern District of Michigan. Without resolving the case, summary disposition was granted to the Monroe City Police

<sup>1.</sup> Despite conflict of interests<sup>15,30</sup>, Bureau of Professional Licensing and the Federation of Medical Boards<sup>16</sup> ratified the unconstitutional acts.

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

As the process server, evidence was heard regarding retaliatory acts, resulting in the ramming of the car of, and incarceration of the process server (Mr. Hall). The ramming of Mr. Hall's car was captured on the police bodycam. The District Court issued a finding that excessive force was used against Mr. Hall. The intent of the District Court was to allow the petitioner's process server Mr. Hall to intervene. It was a reversible error when the District Court failed to add Mr. Hall to the instant case. As described in Appendix " C,D, E"

#### **D. COURT OF APPEALS FOR THE SIXTH CIRCUIT Court Proceedings**

As described in appendix "A and B."

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1 .2.18-cv-12634, E.D Michigan. ECF 21-1. P 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.

15 <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, STATE OF MI. and BCB

## REASONS FOR GRANTING THE PETITION'

### I. Loss of Immunity

#### PROPRIETARY FUNCTIONS

Administrative cost in the health care market is responsible for 25% of health care cost in America <sup>2</sup>. Federal efforts to promote administrative cost savings have included 1) Health Insurance Portability and Accountability Act ( HIPAA) of 1996 , 2) The Administrative Simplification Compliance Act ( ASCA) of 2001, 3) The Health Information Technology and Economic and Clinical Health Act ( HITECH) of 2009, 4) The Patient Protection and Affordable Care Act ( ACA) of 2010, 5) The Medicare Access and CHIP Reauthorization Act (MACRA) of 2015, 6) the 21<sup>st</sup> Century Cures Act, of 2016.

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

In an attempt to circumvent those federal efforts while improving profits, BCBSMIC and other franchisees of BCBSA partners with state and federal agencies, so to commit acts, with an intent to ration health care by a certain methods. Those methods are not in accordance to the facts. The method include : 1) a scheme for the inducing of criminal proceedings against the physicians of the patients whose health care is being rationed, and 2) federal or a state agency use a private entity, as a state actor, to commits acts of search and seizure, that the government agencies are not permitted to perform under the 4<sup>th</sup> Amendment of the United States Constitution. The unlawful acts performed under the color of law, are performed with impunity by the respondents under the cover of immunity. Such grant of immunity produces outcome that are not rationally related to either a compelling or legitimate state interest, nor provide the best interest of the patients.

*MCL 691.1407 provides for the: EXCEPTIONS TO IMMUNITY*

There are, however, six recognized exceptions to the general rule that the government is immune from tort liability. In each of these exceptions, the injured party would be able to bring a lawsuit against the government for compensation "

4 . The performance of proprietary functions "

In addition to the seeking of money from Civil and Criminal forfeiture, the joint enterprise developed, maintained, acquired data for via MAPS, and sold opioid monitoring software, to end users. Such conduct represents a proprietary and not a discretionary function. The participation in proprietary activities barred the affirmative defense of Absolute Immunity and qualified immunity by the defendants.

#### **STATE INVOLVEMENT DOCTRINE**

##### **Direction and Control**

Under the direction and control of law enforcement, BCBSM , BCBSMMIC : 1) inserted agents into the " drug treatment" medical practice without the statutorily required court order under CFR 42 § 2.61-2.67; 2) performed invalid warrantless searches on the banks, patients , and the Doctor. By the sharing of information without the appropriate search warrant, the placement of undercover agents into the medical practice who reported to law enforcement, , BCBSM , BCBSMMIC are involved in conduct that's traditionally a " public function."

##### **Private Providers of Employees as State Actors**

The Insurers supply employees, such as James Howell, aka James Stewart, to act under the direction, and control of law of Brian Bishop and Marc Moore.

MBT Financial Inc., supplied employees, such as Susan Mehregan and Thomas

Scott, to act under the direction, and control of Robert Blair. Private entities, by actions and conduct, inserted themselves into the opioid controversy, and became intertwined with law enforcement. Even if the private individual is not doing something that's traditionally a "public function," his conduct may constitute state action if the state is *heavily involved* in his activities. The Insurers acquire, disclose, and dispose warrantless PDMP (Prescription Drug Monitoring Program) data, and privileged medical records. The evidence was turned to law enforcement. This behavior constitutes "*state involvement*" by the Insurers under state-action doctrine. The employees, Blue Cross become state agents. Similar to law officers "State agents "are liable if they cause constitutional injuries . By virtue of their actions as state agents and also in their private capacity, BCBSMIC, violate CFR 42 § 2.61-2.67, Miranda, Search and Seizure constitutional laws, and rights against self-incrimination. The Insurers have no qualified immunity.

#### Recognition by Government Actors

The private Insurers commonly supply expert witnesses, such as Dr. Carl Christensen, Dr. J Alan Robertson, for DEA and State medical boards , for state-organized litigations against physicians. The Insurers commonly supply informants, such as James Stewart, aka James Howell, for DEA and State medical boards, for state-organized litigations against physicians. The state recognizes the activity of the private business, the Insurers, in state-organized

activity. If a state *formally recognizes* the role played by a private association in a particular type of state-organized activity, that recognition renders that the association will be deemed to be a state actor. IBC, BCBSMMIC, AmeriHealth Caritas, (the Insurers) among others, were recognized by the government for their associations, the Insurers are classified as State Actors.

#### Closure of Alternative Channels

The majority of the patients with chronic pain can maintain function with treatment with opioid. The majority of the deaths occurred because of use of illegal street opioid, and not from prescriptions by physicians. The DEA and Medicare opioid data is holding all pain doctors as potential drug dealers was substantially over inclusive relative to the goal of safety. Alternative treatments to the Opioids, such as nerve blocks, epidural nerve blocks, radiofrequency ablation, sympathetic nerve blocks, acupuncture, implantable devices, and interventional products are more costlier, may not any safer due to risks ( nerve damage, spinal bleeds, blood clot, paralysis, meningitis, tissue damage , infections, death , nor more efficacious than the medications. The decision whether to use medications, nerve blocks, interventional procedure, and alternative medicine goes to the essence of the practice of the field of medicine. Different treatments generate different risks. There are no risk-free procedures. Non-physicians, lacking a medical license, and yet assert the superiority of a unilateral, one-dimensional, approach to pain management, simply fail to

consider the totality of the risks. The non-physicians, such as the Insurers, actively advocate with the state to close the opioid channels of medical treatments for chronic pain. The Insurers advocate without demonstrating that the alternative channels are best for the health, safety, and the general welfare of the population.

#### **Advocacy of Illegal Conduct**

Without warrant, on 9/26/16 federal officers placed themselves into the space of an office at 730 N. Monroe St, Suite 222. The federal officers included: Brian Bishop, Chamulak, Hicks, Guzowski, Farrell, Gates, Shawn Kotch, Sara Bruciak, inserted themselves on an illegal search and seizure in the City of Monroe, Michigan. Under *Silverman v. United States*, 365 U.S. 505 (1961), a federal officer may not, without warrant, physically place themselves into the space of a person's office or home to secretly observe or listen and relate at the man's subsequent criminal trial what was seen or heard.

The Insurers provide employees, such as James Stewart aka James Howell, to other state actors. James Stewart videotape patients, protected under CFR 42 § 2.61-2.67, undergoing medical treatments in "drug treatment Suboxone programs". The insurers furnish those videotapes to law enforcement as probable cause in affidavits, offered in support of search warrants of physicians. Those defective search warrants search produce tainted evidence (the fruits of

the poisonous tree). The Insurers intended to incite or produce lawless action. The Insurers succeeded to produce or incite constitutional injuries.

### IMMUNITY

With the exception of IPatientCare Inc., the defendants, at all times relevant to this complaint, were acting the color of law, and thus subject to the Stripping Doctrine . When a State official acts contrary to federal law, the official is thereby “ stripped “ of any states garb and transformed into an ordinary private individual. ( *Ex Parte Young*, 209 U.S 123 (1908)). The private individual, such as BCBSMMIC, BCBSM and their employees, is strictly liable personally for constitutional tort.

Under Monroe v. Pape, 365 U.S. 167 (1961) the police and correctional officers acting under the color of law, are liable under § 1983 . Liability will attach under § 1983 when an officer misuses his or her authority and violates an individual's constitutional rights. The U.S Supreme court rejected the contention that only unconstitutional policies are actionable under § 1983. " *City of Canton, Ohio v. Harris.*" [489 U.S. 378, 388]. In the latter, the court agreed that a city can be liable under § 1983 for inadequate training of its employees. Under *Monell* (*Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978)), municipalities and other government bodies are considered persons under § 1983. City and local governments and their employees can thus be sued under a

§ 1983. Plaintiffs can recover damages against county, city, municipal and other local government for the actions of their officers.

#### ADA Violation

The ADA (American Disability Act) is a clearly established law that provides for appropriate medical care to the disabled. Upon the 9/26/2016 raid of Monroe's sole, full time-based, pain clinic, based at Promedica Monroe Regional Hospital , a sudden disruption in the health care delivery of chronic pain patients disturbed many patients considered disabled under the ADA. The patients scrambled for help by overwhelming the 911 emergency system of the County and City of Monroe. The City of Monroe and its police department, Monroe County, MANTIS, Michigan State Police failed to activate the 911 emergency system to assist disrupted patients, such as the plaintiff, considered disabled under the ADA. Someone suffering from chronic unrelenting disease, like the plaintiff with, require reasonable accommodation under the ADA.

Even by gross visual survey, objective signs of the plaintiff's disability could be entertained during the surveillance of James Stewart, aka James Howell, Scott Beard, Brent Cathey, Brian Bishop, Marc Moore, Robert Blair, Sean Street. The ADA statute provides for criminal sanctions for violation of the act. The plaintiff belongs to the class of people meant to be protected under the ADA. The ADA was violated when the defendants, by conduct or by deliberate

omissions, denied medical care to the plaintiff when they had a duty to so. The violation established the elements of duty and breach of a negligence action. As an actual and proximate result of the breach, the plaintiff suffered bodily physical and emotional harm (fright, fear, sorrow, despondency, humiliation, anxiety, depression). The violation of the ADA constitutes negligence *per se*. State Sovereign immunity is deemed waived pursuant to the ADA.

### **Qualified Immunity**

“The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.”

*Wilkerson v. Goodwin*, 774 F.3d 845, 851 (5th Cir. 2014) (quoting *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005)). The plaintiff has sued under 42 U.S.C. § 1983.

*Qualified immunity protects the police officer, or agents of the governments, or government official unless the police officer or government official violated a clearly established constitutional right. (Wood v. Moss, 134 S. Ct. 2056 (2014).*  
Bad faith is supported by the facts, such as violation of the ADA.

Qualified immunity “shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of

the challenged conduct.” *Bustillos v. El Paso Cty. Hosp. Dist.*, 891 F.3d 214, 220 (5th Cir. 2018) (internal quotation marks omitted). “A right is clearly established only if its contours are sufficiently clear that ‘a reasonable official would understand that what he is doing violates that right.’” *Id.* (quoting *Carroll v. Carman*, 135 S. Ct. 348, 350 (2014)). The contours are sufficiently clear if “[t]he unlawfulness of the defendant’s actions [was] readily apparent from sufficiently similar situations, but it is not necessary that the defendant’s exact act have been [declared] illegal.” *Brown*, 623 F.3d at 253.

“The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.”

*Wilkerson v. Goodwin*, 774 F.3d 845, 851 (5th Cir. 2014) (quoting *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005)). The loss of liberty to reduce pain and suffering produced by an involuntary impairment of medical care is more than a loss of freedom from confinement.” *Id.* at 492 .

In *Hanson v. Sangamore*, a violation of the ADA was not defensible by qualified immunity. *Hanson v. Sangamore Co. Sheriff’s Department*, 991F. Supp.1059 (C.D. III.1998). Similarly, in this case, the defendant’s violation of the ADA bars their qualified immunity.

The plaintiff had a reasonable expectation of privacy in her medical records. The defendants searched and seized the plaintiff’s medical records pursuant to a

third-party, extra-territorial warrant admitted being invalid by the defendants, facially defective search warrant supported by false statements in the affidavits. The invalid warrantless search constitutes a violation of the clearly established law, namely the 4<sup>th</sup> Amendment of the U.S. Constitution.

#### *County Governments*

Under Lepidus, County governments, such as Monroe County, are not protected under the 11<sup>th</sup> amendment. County governments are not considered part of the State for 11th Amendment purposes. (Lincoln County v. Luning, 133 U.S. 529 (1890)).

The state of Michigan received federal dollars for health care via Medicare and Medicaid; as a condition for the receipt of Medicare and Medicaid dollars, the state waives state sovereign immunity. The instant case involves issue of Medicare and Medicaid dollars received by the State of Michigan, BCBSMMIC, BCBSM, Monroe County.

#### *City Government*

Such disregard to the liberty interest of patients to be free from denial of medical care, constitutes a violation of the 14<sup>th</sup> Amendment Due Process Clause. The plaintiff's Due Process Rights were violated. Pursuant to Owen v. City of Independence, 445 U.S. 662 (1980), a municipality is not immune from a § 1983

for the good faith actions of its officials, the City of Monroe and its agencies are liable. The defendants are not entitled to good faith affirmative defense.

### ***Executive Immunity***

The only Supreme Court case to give any definitive scope to the doctrine was U.S. v. Nixon, 418 U.S. 683. The executive who functions outside the scope of his jurisdiction lacks absolute immunity. Under Clinton v. Jones, 520 U.S. 681 (1997), Harlow v. Fitzgerald, 457 U.S. 731 (1982), Trump v. Vance, 140 S. Ct. 2412 (2020), absolute executive was struck down.

### ***State Sovereign Immunity under the 11<sup>th</sup> Amendment***

The Defendants classified the plaintiffs as “a suspect or semi-suspect class” of Drug Addicts., discrimination against the suspect class falls under a strict scrutiny standard of judicial review. Under a Strict scrutiny review standard, the plaintiff suffered a violation of the Fourteenth Amendment. Congress has power to allow damages for violations of ADA Title II. Title II of the Americans with Disabilities Act (ADA) requires states (as well as private citizens) to accommodate disabled persons’ access to certain public facilities, including courthouses. In Tennessee v. Lane, 541 U.S. 509 (2004), a 5-Justice majority concluded that Congress had power to permit federal court suits against the

states for money damages under Title II of the Americans with Disabilities Act (ADA). Therefore, State Agencies, state magistrates and judges, are not protected under the 11<sup>th</sup> amendment for violations of Title II of the Americans with Disabilities Act (ADA).

The state of Michigan received federal dollars for health care via Medicare and Medicaid; as a condition for the receipt of Medicare and Medicaid dollars, the state must waive state sovereign immunity for health care purposes. The instant case involves issue of Medicare and Medicaid dollars received by the State of Michigan, BCBSMMC, BCBSM, Monroe County, the Bureau of Professional Licensing. the State of Michigan, BCBSMMC, BCBSM, Monroe County, the Bureau of Professional Licensing cannot claim the affirmative defense of sovereign immunity.

There is no state Sovereign immunity, no absolute, and no qualified immunity for a cause of action under the ADA. Congress has not granted qualified immunity under the ADA.

#### **Prosecutorial Immunity**

As agents of the government, James Stewart aka James Howell and J. Alan Robertson M.D., misrepresented legal document with the intent of inducing reliance on those documents. The prosecutors ratified James aka James Howell,

use of a false State of Michigan Driver's license, intentional misrepresentation of a medical referral, false MAPS report, false social security number, obtained controlled substances under a false name, distributing controlled substances to Marc Moore in the absence of an evidence technician or proper placement in the evidence room, the ingestion of the controlled substances by James Stewart aka James Howell while actually performing and undercover investigation. The prosecutors either knew that James Stewart statements were false, or the prosecutors disregarded the truth or falsities of acts committed in the administrative phase of the Pompy criminal investigation. Such conduct constitute recklessness. There is no absolute immunity for acts committed by prosecutors at the administrative phase of an investigation. Under *Dean v. County of Gage*, 800 F.3d 945 8<sup>th</sup> Cir. ( 2015) , the police officers were denied qualified immunity due to reckless investigatory practices.

#### **GROSS NEGLIGENCE**

"Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury may result.

**MCL 691.1407, Sec. 7, provides for immunity except :**

- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employees, members, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

"Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury may result. The ADA is a clearly established law under the state of Michigan and the Federal Law. Charles McCormick, Carl Christensen M.D., William Paul Nichols, Mark Moore, Brian Bishop, William Chamulak, Robert Blair were in a position of power and authority to act for, act on behalf of, and had a duty to adequately train the officers of MANTIS, the DEA agents and the DEA Taskforce officers, to appropriate actions to take during investigations consistent with 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., 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, and the Controlled Substance Act (CSA 802 (56)(c)). The final decision makers provided inadequate or improper training of police about using home visits of patients such as Jes Staten, who was identified pursuant to a violation of CFR 42 §2.61-2.67. Such constitute gross negligence, that violates immunity at the state level.

## MALICE

Malice is the knowing of a statement that 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 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.

A national pattern of deliberate conscious consisted of: 1) violation of search and seizure of privileged medical information (state PDMP data), 2) hacking entry into computers and electrical devices housing electronic medical records, 3) invalid warrantless searches of computer hard drives and electronic devices, 4) the use of facially defective search warrants supported by false statements in the affidavit, 5) the use of extraterritorial warrants that exceeded the statutory jurisdiction of the issuing courts, 6) violation of CFR 42 § 2.61-2.67, 7) a pattern of retaliation. The pattern amounts to a custom or practice amounting to a policy

of deliberate indifference to constitutional rights. Such pattern of behavior is unreasonable since the consequences of using them cannot be foreseen; a physician may in good faith rely on the false documents, and a patient disabled by chronic pain may not obtain the necessary medical treatment. The state actors hacked the medical records under the DOMEX system to violate the Computer Fraud and Abuse Act.

Under Mich. Admin. Code r. 325.14116 a substance use disorder patient's medical records must remain confidential. Not only did Carl Christensen M.D., and Leon Pedell M.D. rely on reports that they are unable to guarantee its validity, they acquired the medical records, the identity, diagnosis, prognosis, and treatment of a patient being treated for substance use disorder. The defendants violated Mich. Admin. Code r. 325.14116.

Under Mich. Comp. Laws Ann. Sec. 330.1261 all records listing the identity, diagnosis, prognosis, and treatment of a patient being treated for substance use disorder are confidential. The defendants violated Mich. Comp. Laws Ann. Sec.

#### **Inadequate Training.**

The defendants in authority inadequately trained the officers in how to respond to disabled persons. ( *Burkhart v. Washington Metro Area Transit Authority*, 11196 Dist. Lexis 1875 D.D.C. (1996). Such Acts constitute malice. The

presence of malice, gross negligence, and reckless conduct bars : 1) qualified immunity, 2) any allegations of contributory negligence against the plaintiff.

## 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. 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, and coordinated a peril in Monroe County 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 debilitative disability, decreased productivity, and long-term disability, as well as having been abandoned by some of her specialists including a surgeon's group. 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 was lowered in Monroe County due to her being a member of a group, readily identifiable with a physician facing a federal indictment. The defendants discriminated against the plaintiff. 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.

#### **Emotional Distress and Personal Physical Injury**

After 9/26/2016, the plaintiff encountered inadequate and/or sporadic pain treatment. Her body was left in unmitigated and/or poorly controlled pain, which distressed the plaintiff to the point of suffering severe emotional distress and anxiety, as well as loss of physical function from the exacerbation of pain and suffering.

#### **DEATHS**

A peril was created by the 9/26/2016 raid when a doctor was shut down, leaving disabled patients without access to medical pain care. The raid induced fear, humiliation, anxiety, emotional distress in the remaining treating physicians. The remaining physicians have shunned from providing medical care to the chronic pain patient. The reduction in medical has reduced the cost of the defendants for medical services. The lack of medical services has led to some deaths, notably, Janet Lortuss, Greg Glasser, Richard Johnson, Renay Blakesley, Bijaro, Marie brown, Joshua Cangliosi (informant living at America's Best Hotel, overdosed of heroin ), Richard Johnson, John Hernandez, Jeffery Luke Brooks, Marie Brown among others. BCBSM, BCBSMMIC, BCBSA and Monroe Bank and Trust Inc., not only aided and abetted improper acts in Monroe County, but by repeated inaction, as in light of the 8/14/2017 that Robert Blair faxed letter to IpatientCare Inc, actions suffice to condone the violence.

*(Okin v. Village of Cornwall-on-Hudson Police Dpt., 577 F. 3d 415 ( 2d Cir*

2009)

#### **Retaliation**

Mr. Hall is well known African-American political activist. Mr. Stacey Hall was the process server of the plaintiff. Mr. Hall served Brandy Mc Million and Wayne Pratt, then proceeded to serve Judge Daniel White, Judge Jack Vitale, Magistrates Tina Todd and Jessica Chaffing, Marc Moore, among others. Mr.

Hall's car was rammed, suffered permanent injuries to his eyes, and was incarcerated. At first was searched and seized in Monroe County; he was later transferred to Livingston County jail. Livingston County is well known in the state of Michigan as the capital of the Klu Klux Klan. A pattern or practice, amounting to a policy or customs, of deliberate indifference to Mr. Hall's, and among other Monroe County Citizens, constitutional rights are evident.

#### **Retaliation – FRAUDULENT MISREPRESENTATION**

Plaintiff, Stacey Hall, was added to the *Tracy Clare Micks-Harm v. William Paul Nichols* (Case No. 2:18-cv-12634) by the Honorable Judge Denise Page Hood. On 2/15/19 , ECF on 10/27/19 , Tracy Clare Micks Harm noted that on ECF 533 6/21/2019 filed, and entered on 6/24/2019, that Stacey Hall was amended to the Harm v. Nichols case, as an interested party. ECF 159 filed on 4/3/2019, entered on 4/4/2019, an Ex-parte asking to add Stacey Hall to the Case based on the Criminal Justice Act. On 4/10/2019, ECF 176 was a motion to amend Mr. Hall to the case because he was a process server, being retaliated over. Mr. Hall suffered ongoing retaliation. On 4/11/19, the ECF 176 was filed. ECF 176 was a motion to amend or correct the complaint. On 10/27/19, Ms. Micks-Harm went into the ECF system, to look for dates. Micks- Harm noted that on ECF 33, 6/21/19 filed and 6/24/19, Mr. Hall was an interested party to the case, per Judge Denise Page Hood. On 10/27/19, Ms. Micks Harm went into the ECF,

investigating the retaliation of Mr. Hall; and noted that Magistrate R. Steven Whalen was removed from the Micks-Harm case on 7/8/2019. ( ECF 541). On 11/1/19, Ms. Harm went into the ECF, investigating the status of Mr. Hall. the ECF text of ECF 533 was changed. The ECF no longer stated that Mr. Hall was a pro-se interested party. The text was changed after the severance motion was placed. The docket text was changed from last week to this week. The docket entry numbers sequence was changed, tampered. ECF 533 was changed and tampered with. ECF 533 no longer stated what it did back on 10/27/19. Other docket entries following the plaintiff's appeal, on 10/27/19 was checked. The certificate of service was now text only , without a docket number, at 7000 East Dunbar Road. The text dealt with the severing. ECF 792 ( text only ) went to Stacey Hall on Dunbar RD, from Case No 18-12634. ECF 792 ( text only ) went to Stacey Hall on Dunbar RD, from Case No 18-12634. Moving on, case Number 19-CV-11064-RHC ( Presiding judge R H Cleland, Magistrate Steven Whalen. ECF 34, filed on 10/16/19, is Magistrate Judge Whalen Order, striking an order for the Mr. Hall to proceed on his own, against Mr. William Paul Nichols. The Magistrate Whalen would discuss the matter with Judge Hood. At around that time, Mr. Hall was moved from the Monroe County Jail dormitory to the Monroe City Jail ( 100 East second street). During that time, all of Mr. Hall's legal work product was withheld by the law enforcement. This is the result of law enforcement, listening in on conversations between Ms. Harm and Mr. Hall,

that on 6/24/2019, Mr. Hall was added to the Hall v. Nichols , as a Party of interest. On 9/30/19, Denise Page Hood did not dismissed Mr. Hall as an interested party. The videotape was withheld. A request for Mr. Hall to have a notary public to allow Mr. Hall to grant Ms. Harm, power of attorney, was not granted. The information regarding Mr. Hall was misrepresented.

## **II. Causation and Redressability**

BCBSMMIC, HFPP, GDIT, and Qlarant Solutions introduced into the stream of commerce an opioid monitoring software product that classify physicians, involved in the treatment of pain. The classification scheme uses race, nation of origin, level of assets to coordinate the prosecution of selected physicians for prosecution. The software speculates as to the existence of "pill mills". While its error rate is unknown, the software is made for the purpose of litigation and not for the purpose of conducting independent research.

Law enforcement unjustifiably relies on software product to raid, incarcerate, and forfeit the assets of physicians. The targeted physicians are shut down, while the patients loose access to entitled medical care under the ADA. As But for the lack of appropriate pain treatment, the petitioner would not have lost the opportunity for pain control. Unrelieved pain is known to cause many harmful effects, including impaired activities of daily living, high blood pressure, strokes heart attack, desperation, stigmatization, aggravation of pain and suffering, and 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, unnecessary pain and suffering.

### III. Statutory and Prudential Standing

The plaintiff suffered an actual violation of her 14<sup>th</sup> Amendment liberty interest to medical treatments. The plaintiff is 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). II .Whether *Carpenter* applies to the search and seizure of the petitioner's PDMP data, medical records, and personal identifier data, where that data is involuntarily held by a third party?

Without a legitimate or a compelling government interest in the health safety and welfare of the petitioner, or congressional intent, HFPP controls unparalleled cross-data information. In the search of substantial restitution in the name of fraud and abuse, the Executive Office of U.S. Attorneys (EOUSA) provides critical litigation support for complex health care fraud investigations and litigation. Under HFPP, PDMP data has grown to include a host of third party data that are acquired without the consent of the owner of the data. The HFPP partners, include : 1) judiciary, law enforcement, and executive governmental agencies without Article 3 constitutional safeguards, and 2) private entities, such as BCBSMMIC, and Associations , such as BCBSA, acting as agents of the government outside FACA (The Federal Advisory Committee Act) . Credit rating companies have also joined. Under *Tumey*<sup>6</sup>, the search warrants for the petitioner's PDMP and medical records, while coordinating convictions that seeks substantial restitution from health care providers for money, represent structural errors. Pursuant to *Tumey*<sup>6</sup>, the search warrants and unlawful HFPP contracts must be vacated.

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

The mixture of medical records, personal identifiers, credit, insurance, medication prescribed, and PDMP data, is involuntarily held by HFPP (Appendix G).

The owner of the data lacks control as to the type, quantity, and sensitivity of the HFPP metadata. The owner of the data is likely to be completely unaware of the data repository until the insurer or HFPP uses the data as probable cause to induce criminal proceedings. The original owner of the data lacks the means to verify, challenge, or hold a hearing regarding any possible errors in the data.

PDMP errors (Appendix F,G) can have catastrophic consequences.

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., 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 Accreditation of Healthcare Organizations (JCAHO) "pain as the 5<sup>th</sup> Vital Sign," EMTALA ( Emergency Treatment and Labor Act) laws, and the Controlled Substance Act (CSA 802 (56)(c)), the plaintiff was entitled to medical care. A duty to treat patients, burdened by disabling chronic pain, is established under The American Disability Act §126. A duty to treat the addicted patients, by Data Waived Physicians, arise under through the Drug Addiction Treatment Act of 2000 (Data 2000) under SAMSHA. The petitioner has fundamental rights to medical care. The actions of the defendants unduly burden the right to medical care of the plaintiff. The government has not shown a compelling state interest to

survive a constitutional challenge. The petitioner has support for judicial review under a strict scrutiny basis of review.

The Monroe County District Court admitted the lack of jurisdiction over the New-Jersey Citizen (Case 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16). The medical records were illegally obtained. The plaintiff had a fundamental interest in the possessory interest of her medical records, PDMP data, and personal identification data, generated in her physician's office in the state of Michigan, but maintained and encrypted by third-party, New-Jersey citizen IPatientCare Inc. The petitioner never gave IPatientCare Inc. the authority to disclose her privileged information. 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 prohibition against search and seizure represents fundamental rights. The petitioner has standing for judicial review under a strict scrutiny basis.

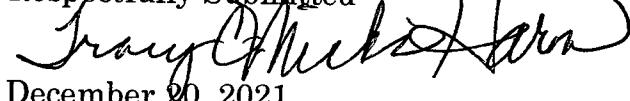
Under Carpenter <sup>4</sup> (where data is involuntary given by the person, the Supreme Court invalidated the third party doctrine. The plaintiff has a reasonable expectation of privacy in his PDMP data. Where PDMP data of a patient is

involuntary given to the state of Michigan and an unconsented, warrantless, search and seizure of the plaintiff's PDMP data is taken occurs issue here. Carpenter should apply here as well. Pursuant to Carpenter, law enforcement performed an invalid search and seizure of PDMP (Prescription Drug Data Monitoring Program), medical records, and personal identification data.

### 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



December 20, 2021

Tracy Clare Micks Harm

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