

No. _____

21 - 6309

In The

Supreme Court of the United States

Patrick Andrew Smith Jr

Petitioner,

V.

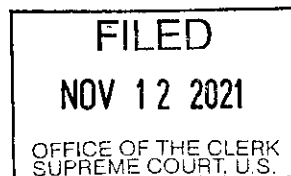
William Paul Nichols et al

Respondents,

ORIGINAL

On Petition For Writ of Certiorari To The United States Court of
Appeals for the

Sixth Circuit Court of Appeal (19-2226)



PETITION FOR A WRIT OF CERTIORARI

In Forma Pauperis

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QUESTIONS PRESENTED

I . Where the plaintiff's fundamental right to medical treatment is violated under conflict of laws, unsettled area of law statutes and guidelines pursuant to : 1) CFR 42 § 2.61-2.67, 2) the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., 3) the Affordable Care Act, 42 U.S.C. §18116, et seq, 4) the Nuremberg Code §§4 and 44 Code of the Geneva Convention, 5) Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5th Vital Sign," 6) EMTALA (Emergency Treatment and Labor Act) laws, 6) the Controlled Substance Act (CSA 802 (56)(c)), 7) the Drug Addiction Treatment Act of 2000 (DATA 2000) under SAMSHA, 8) PROP (Physicians For Responsible Opioid Prescribing) guidelines, 9) the 2016 CDC Guidelines and the proposed July 2021 revised guidelines , 10) the pharmacist's corresponding responsibility under CFR 1306.04 (a) where dispensing of a prescription ratifying the validity of that prescription for controlled substances, 11) health insurance pre-authorization services of medications, 12) Pharmacy Benefit Programs (PBM) formularies, 13) THE June 16 2020 AMA Letter to the CDC and the American Medical Association Drug Task Force studies, and 14) the 2019 HHS " Best Practices - Pain Management Guidelines - is there a basis for the use of strict scrutiny standard for judicial review , regarding the release of information and affidavits - supporting the search and seizure of PDMP and medical records?

II . Where the state has a legitimate interest in reducing overdose drug deaths, does a private entity, such as BCBSMMIC or Qlarant, acting as agents of the state under the color of law, is the use of false medical records, false state of Michigan driver's license, false social security number, false documents, to coordinate the incarceration of non-white physicians, is that conduct related to a compelling government interest?

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LIST OF PARTIES

PATRICK ANDREW SMITH, Pro Se

V.

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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
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MANTIS ,MCSD, VICE UNIT DET. MIKE MCLAIN
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MONROE COUNTY MAGISTRATE JESSICA CHAFFIN
MONROE COUNTY JUDGE JACK VITALE
MONROE COUNTY JUDGE DANIEL WHITE
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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
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CARL CHRISTENSEN MD, PH.D
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WITNESS, VAUGHN HAFNER, R.PH.
MICHIGAN BUREAU OF PROFESSIONAL LICENSING , KEEPER OF THE
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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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25 .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..... P9

OPINIONS BELOW

Petitioner Patrick Andrew Smith Jr moves pro se, from a Final Order of Reconsideration from the Sixth Circuit Court of Appeals, dated June 30, 2021¹. On May 24, 2021, the United States Court of Appeals for the Sixth Circuit improperly affirmed. A Sherman anti-trust suit, adjudicated in the state of Alabama³ and the judgment disallowed by the 6th Circuit Court of Appeal. An unlawful search and seizure exists, and coerced visits of patients by law enforcement without counsel occurred²⁶. 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.

JURISDICTION

In 2018, petitioners filed the instant case in the United States District Court for the Eastern District of Michigan. The petitioners alleged, inter alia, deprivations of civil rights and constitutional injury within the meaning of 42 U.S. Code § 1983 and the 4th Amendment, the American Disability Act, a Bivens Claims 2.

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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

27- 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

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, 3) improper service of process from the Bureau of Professional Licensing (BPL) Dina Young who swore on an affidavit that she had served notice to an ISO to the Petitioner in writing, actually given by Brian Bishop, in violation of Fed. Rule of Civ. Proc. Rule 4, 4) a RICO violation.

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.

I. STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

BCS Insurance Group, Blue Cross Blue Shield Association (BCBSA) and its franchisees, such as Blue Cross Blue Shield of Michigan Mutual Insurance Company ("BCBSMMIC"), and Independence Blue Cross (IBC), provide health insurance, and : 1) power back office and front office operations for Medicare and

Medicaid, 2) share investigative methods of physicians involved in the treatment of pain and addiction, 3) coordinate investigations of health care fraud at a uniformly low price, 4) dominates the health care market, and 5) effectively raises health insurance premiums simultaneously via BCS Insurance Group.

Qlarant Solution, Inc. (formerly Qlarant Medic), General Dynamics Information Technology (GDIT), Medicare "Pill Mills" analysis, BCBSMMIC'S "Prescriber Block Analysis", Blue Cross Blue Shield Association, Independence Blue Cross ("IBC"), among other private companies, have intertwined themselves and have equal control, as state actors, with the DEA, OIG, CMS, Medicare, Medicaid, and the FBI for an improper purpose. The above parties seek: 1) prospective criminal investigations, 2) mutually beneficial proprietary pecuniary gains via assets forfeitures of health care entities, 3) tax write-off from speculative, but uncollectible restitutionary recoveries from health entities. Where the dollar amount in the restitutions bear no specific relation to actual damage, the dollar amount sought under restitution represent an unenforceable penalty.

Qlarant, BCBSMMIC, IBC, BCBSA, GDIT) advertised their entry into: 1) traditional police of criminal investigation, 2) into governmental prosecutorial functions by coordinating the criminal conviction of physicians, 3) depriving of medical care people considered disabled and entitled at law to medical care under the ADA, 3) prevent the government from mitigating financial loss that arise from controlled substances prescription drug diversion. BCBSMMIC exceeded the limits

placed on profits under the federal statutes ²¹. BCBSMMIC can both raise health insurance premiums while inducing criminal proceedings through HFPP and Qlarant. The criminal proceeding generates lucrative “other income” under an accounting scheme, via restitutions, civil and criminal forfeiture. Prosecutorial misconduct result ^{20, 26}. Blue Cross Blue *Insurance* Company, BCBSMMIC, GDIT, Qlarant solutions, DEA, OIG , CMS, Medicare, Medicaid, and the FBI law enforcement formed a joint enterprise, trade association named, HFPP (Health Care Fraud Partnership). The partners shared and analyzed competitive data of the most lucrative patients to insure, shared and analyzed competitive information to restrict competition. HFPP excluded other health insurers, in restraint of trade, such exclusion constitute a criminal violation of the Sherman Anti-Trust Act ¹⁷. Dan Loep, the CEO of BCBSMMIC out -earned executives of even, much bigger companies ⁷. Conflict of interest in the state of Michigan forecloses justice ¹⁹.

.....

7. <https://www.freep.com/story/money/business/2019/03/01/blue-cross-blue-shield-michigan-daniel-loepp/3028558002/?fbclid=IwAR0eEqqnSg65WVBv473MEUFXTT3ERM3V4J80l4LJZELPYhw17BaV5zPUsY>

17-Neil Anand, et al v. U.S. Department of Health and Human Services, (Case No 1: 21- 01635 (D.C (2021). Doc 15. Filed 10-25-21. Page 22 to 26 of 31.

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

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

21-Neil Anand, et al v. U.S. Department of Health and Human Services, (Case No 1: 21- 01635 (D.C (2021). Doc 15. Filed 10-25-21. Page 23 of 31.

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

Senator Bernie Sanders criticized Blue Cross CEO over \$19M pay^{8,9} for contributing to the high cost of health care, in a medically underserved area. When contrasted to other industrialized countries, administrative costs, as a percentage of total health care costs, in the United States health care system is disproportionately high^{5, 10}. Social and economic determinants control the opioid crisis⁶ but were not considered as factors in the opioids crisis. BCBSMMIC administers health plans, as defined by 42 U.S.C §1320d-1, and was and is a covered entity subject to federal regulations designed to protect individually identifiable health information of patients, said regulations being promulgated by the Secretary of health and Human Services at 45 CFR 160, 162, and 164, under the authority of Section 264 of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (codified at 42 U.S.C. §1320d-2 note) (the “HIPAA Regulations.”)¹².

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

6. <https://end-overdose-epidemic.org/wp-content/uploads/2021/09/AMA-2021-Overdose-Epidemic-Report-92021.pdf>. 10/03/2021...

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

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

12 .*United States v. Angela Patton, et.al.*, (2:15-cr-20094. U.S. District Court Eastern District Of Michigan (2015) P3).

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

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

By statute, a health insurer selling, general, and administrative expenses is limited to a certain percentage of the Net Sales, typically about 20% to 30%. BCBSMMIC has found ways to circumvent the statutory limit. BCBSMMIC has two ways of maximizing its profits, either by : 1) increasing the premium, so that it would be allowed to spend a greater of its Gross Profits to fuel greater executive salaries and perks from the increased Selling, general and administrative expenses, or 2) generate income classified under "other income", such that would not be classified in Operating Income Before Income Taxes, and not the EBIT.

The intentional misrepresentation of the federal statute, so to induce reliance by law enforcement actions against physicians, and law enforcement unjustifiably relied on the misrepresentation, manufactured probable cause. The lack of probable cause in physicians selected for federal indictment, constitute Fraud.

HFPP is an organized trade association that marketed, compiled, summarizes, and disseminates the information to the members of the "pre-crime "industry, iwhtout substantive and procedural due process constitutional safeguards. HFPP excludes other health insurers from the data sharing. In violation of §1 of the Sherman Act, HFPP provides a vehicle that deprives the marketplace of independent decision making. Parties acting together in order to accomplish a particular result are involved in a concert of action that makes anyone of them vicariously liable for the torts committed by the others.

The State of Michigan relied on false statement in the affidavit of service of process on 8/4/2017, by Dina Young, to obtain the medical records and PDMP data of the petitioners. BCBSMMIC , BCBSM (Blue Cross Blue Shield of Michigan), BCBSA (Blue Cross Blue Shield Association, DEA agents Brian Bishop and 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, 9/23/2016, 9/27/2016, February 2018 and 5/23/2018. The members of the joint enterprise created by the defendants: 1) intruded into the corporate practice of medicine, 2) codified their actions via the partnership in the HFPP (Health Care Fraud Partnership) without substantial and procedural due process safeguards, 3) failed to monitor the continuation of medical care of the petitioner that was once provided by the doctor, who is now facing criminal proceedings, and 4) failed to disclose the FDIC material facts related changed circumstances. Where a fiduciary duty existed, the non-disclosure of a fact amounts to a fraudulent assertion under Gramm Leach Bliley, in the acquisition of the petitioner's data. The HFPP has final authority to healthcare payers, employer organizations, USDOJ, FBI, OIG, and CMS itself. Statutory notice of the meetings to competitors of BCBSMMIC and BCBSA did not occur, in violation of FACA ¹⁸. The FACA violations are not in common usage, cannot be made safe by reasonable activity, and constitute abnormally dangerous activities.

Qlarant Solution Inc. (formerly Qlarant Medic), General Dynamics information technology, Medicare “Pill Mills” analysis , and Blue Cross Blue Shield of Michigan Mutual Insurance Company (BCBSMMIC), Blue Cross Blue Shield Association, Independence Blue Cross, among others introduced in the stream of commerce opioid monitoring software, from at least 2009. The software use a classification scheme based on race, 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, to represent that their opioid software had the ability to detect “Pre-crime.” Such representation by Blue Cross 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 ¹⁷. The Federation of Medical Boards ratified the discrimination ^{5,22} .Statements of Works (SOW) ²⁵ shows BCBSMMIC acting as a state agent.

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17 . Case 1:21-cv-01635-CKK Document 9-2 filed 9-24-21 P Page 15of 54

18-Neil Anand, et al v. U.S. Department of Health and Human Services, (Case No 1: 21- 01635 (D.C (2021). Doc 15. Filed 10-25-21. Page 29 of 31.

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

24 .Kaul v. Christie, 372 F. Supp. 3d 206 (D. NJ. 2019)

25 STATE OF MICHIGAN PROCUREMENT

NOTICE OF CONTRACT NO. 190000000755

THE STATE OF MICHIGAN and BCBSM

On 5/07/2016, MANTIS police officer Sean Street reported that Ricky Bryant, along with his son in law Joshua Cangliosi and his daughter Vanessa Cangliosi were attempting to sell his morphine medication that he had received from Dr. Pompy. Dr. Pompy had not prescribed morphine to Ricky Bryant prior to 5/7/2016. In the face of known danger, Sean Street failed to warn the community, Dr. Pompy, or the petitioner of any possible diversion. Had Sean Street warned Dr. Pompy, the latter would have stopped prescribing to Joshua Cangliosi and Ricky Bryant. Aware of a risk, Monroe County Sheriffs, MANTIS, MSP, Monroe City Police, DEA, consciously disregarded the risk and proceeded anyway. Such conduct represents a reckless unjustifiable risk of harm to the human life of Joshua and Ricky Bryant. Joshua Cangliosi would subsequently die of a heroin overdose in about 2019.

MBT Financial Inc. failed to disclose of the invalid warrantless search and seizure of information, used in affidavit of support of search warrants to obtain the petitioner's medical records. 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.

Blue Cross has not shown that the software actually predicts criminality. Blue Cross failed to give warning of the risk of personal injury to the doctors, the patients, and law enforcement. In reliance to the software, law enforcement unreasonably induced criminal proceedings against physicians of the suspect class.

A prior authorization mechanism existed so to ensure appropriate prescribing. Qlarant and BCBSMMIC gave no notice to doctors as to which behavior would be considered prohibited. BCBSMMIC is a mutual insurance company incorporated in the state of Michigan; BCBSMMIC is involved in interstate commerce via AmeriHealth Caritas. BCBSA franchisees, BCBSMMIC and Independence Blue Cross, jointly own and operate a Pennsylvania-based health care insurer, subsidiary AmeriHealth Caritas. As the sole health insurance company in all 83 counties of the state of Michigan, BCBSMMIC : 1) dominates the Michigan Health care market , 2) exercise superior bargaining power to reduce competition over other health insurers, 3) the anticompetitive behavior cumulative and directly, adversely impact interstate commerce.

Without correctly identifying the terminal disease status of the disabled patients, Qlarant and BCBSMMIC manipulate data in their data analytic software product by customizing their general statistical, non-stratified and non-MME normalized data beyond gross pill count prescribed, tail risk medically foreseeable events is criminalized, to target a particular physician. The reliability of the software, particularly in regard to rational polypharmacy, was established only by “junk science.” Medicare Pill mills analysis, Appriss Heath, Qlarant, and BCBSMMIC data are inconsistent.

The Federal Advisory Act (FACA) violations led to disastrous damages. Many physicians suffered loss of medical licensure. Facing the lack of medical care or

alternative reliable efficacious treatment in medically underserved areas, the affected class of patients have often died, (e.g., Richard Johnson, Janet Lorus, Renay Blakesley, Joshua Cangliosi, Greg Glasser, Jeffery Brooks, John Hernandez, Bijarro. Marie Brown), 2) others have sought refuge in illegal drugs, 3) still others have suffered from worsening pain and suffering, depression, anxiety, disability. The Software intended to coordinate criminal convictions of doctors, using a medical malpractice evidentiary standard of evidence as probable cause of criminal intent, is not reasonable. The respondents "pre-crime" software carry a risk of death, disability, and of inducing criminal proceedings. As such, the respondent's activity imposes an absolute duty to make safe. The dangerous aspects of the activity are the actual and proximate cause of the petitioner's injury. The petitioner suffered damages to his body, (extreme emotional distress, fright, muscles, nerves, mind, exacerbation of Charcot Marie Tooth Disease) and medical records property. The respondents were involved in an abnormally dangerous activity, for which the respondents are strictly liable.

Carl Christensen M.D. was a competitor of Dr. Pompy. The software is used by BCBSMMIC's employee Carl Christensen M.D to compete against the petitioner's doctor, Dr. Pompy in an unlawful manner. BCBSMMIC uses the Prescriber Block Analysis software and the HFPP, among its anticipative strategies, to : 1) control insurance premium in the health care market, 2) promote regulatory racism, and 3) ration health distribution to the disabled by inducing reliance by law enforcement to begin criminal proceedings against physicians. Predatory

anticompetitive strategies for market dominance have been litigated, and a settled for \$2.7 against BCBSMMIC³. In the aggregate, BCBSMMIC, along with other franchisees of BCBSA (Blue Cross Blue Shield Association), substantially interfered with the insurance premium for health care. The diseased state, the medical status, specific versus general causation, and the availability or unavailability of reasonable alternative medical care of similar risks and efficacy were not considered. The failure to consider of material facts in support of a finding of sufficient evidence for finding probable cause negates the basis for support of the issuance of a search warrant of the petitioner's medical records. The constitution of the United provides that a search warrant should be issued only upon probable cause. The alleged finding of a basis for probable cause for the issuance of the search warrant of 9/23/2016, 8/14/2017, and 5/26/2018, did not rise above "subjective belief or unsupported speculation." A constitutional violation occurred.

James Howell, a former police officer who was a discharged former police officer, reappeared under the name of James Stewart, as a BCBSMMIC employee used as a confidential informant for MANTIS, Robert Blair, and the DEA. James Stewart, aka James Howell, presented to a medical office with a medical referral from referring doctor, a BCBSMMIC employee, J. Alan Robertson MD. James Stewart knowingly videotaped the presence of patients seeking confidential medical treatments, in the medical office of Dr. Pompy. Many of such patients have experienced severe emotional distress from the extreme and outrageous behavior of James Stewart. Carl Christensen, J Alan Robertson M.D., and James Howell,

BCBSMMIC, MANTIS and the Monroe County Sheriff's Department, the DEA task force officers, and the Michigan State police are paid by the DEA under Operation Gateway and Operation Stone Garden.

James Stewart, aka James Howell, filled out, and signed his name, on a new patient pain questionnaire and multiple pre-visit questionnaires at Doctor Pompy's office. James Stewart, aka James Howell, indicated that his physical function was limited by pain and suffering. 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 consumed the prescribed pain medication that he was supposed to be investigating. Unreliable informant James Stewart, aka James Howell, lacked the court order, as required under CFR 42 § 2.61-2.62, to videotape his investigation into a medical office that treats substance abuse. Around 2019, the DEA sought an ex-post facto court order to cover the intrusion. James Stewart videotaped patients undergoing substance abuse treatment without consent, privilege, or notice. Accompanied by Marc Moore, Walgreen's filled prescription for controlled substances for James Stewart, paid by BCBSMMIC. Walgreen's did not perform under any duty arising out of "corresponding responsibility." Walgreen's saw no problems, no probable cause of a crime, with the prescriptions Dr. Pompy wrote for James Stewart.

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. Without consent, privilege, or notice, Robert Blair would reuse the improperly searched and seized data in an affidavit of support of a search warrant for the petitioner's medical records, 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 statements 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 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 Insurance Portability and Accountability Act (HIPAA), the 4th Amendment, and the "Federal Privacy Act 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. The search was unreasonable. The Lack of jurisdiction over the New-Jersey and Florida citizens is admitted by pleadings from Monroe County^{1, 13}.

1 .Tracy *Claire Micks Harm v Nichols at al*, Case 2:18-cv-13206-DPH-RSW ECF No. 20 filed 11/16/18 PageID.193 Page 3 of 5)

13 . 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16. Section IV).

On 9/26/2016, DEA Diversion Investigator Brian Bishop and William Chamulak, :

- 1) misrepresented a State of Michigan MANTIS criminal investigation as a DEA Administrative Audit,
- 2) performed a warrantless search and seizure during a Two-Steps Custodial interrogation of Dr. Pompy,
- 3) seized tax documents, canceled checks, and medical data of patients protected under C.F.R. 42 2.61- 2.67. The seized evidence was never logged into proper custody by the custody technician into a proper chain of custody. Relying on a defective search warrant issued on 9/23/2016, a 6/26/2018 Federal Indictment cannot be used as probable cause in the obtaining of the petitioner's medical records in violation of Article 3 of the United States Constitution.

Judiciary branch and the law enforcement branch of government were not acting independently. The facially defects of the 9/23/2016 and 8/14/17 extraterritorial 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 \$25000 statutory allowed amount in controversy,
- 7) lacked personal and subject matter jurisdiction over IPatientCare Inc.,
- 8) lacked the personal and subject matter jurisdiction over the New-Jersey Citizen,
- 9) violated Subject matter jurisdiction

over interstate commerce between the State of Michigan and the State of New Jersey, 10) exceeded the permissible execution time 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, 11) lacked court logs determining the location for a hearing 12) executed on 3 different parties located in different states, namely Lesly Pompy, Interventional Pain Management Associates Inc. and IPatientCare Inc. of New-Jersey. IPatientCare Inc. of New-Jersey was not listed in particularity as a place to be searched and seized and thus improperly submitted to a show of authority of Robert Blair, John Lasota, Brian Bishop, and Marc Moore.

Dale Malone, William Paul Nichols, Charles F. McCormick, Marc Moore, and Brian Bishop had final authority as to hiring, training, supervising, disciplining, and firing. Dale Malone provided the SWAT TEAM for the 9/26/2016 raid. Children and their parents who were present at the office at the time of the raid, were detained, searched and seized. The detained patients and children asserted their rights to counsel, but were denied of their request for counsel.

At about 08:30 to about 09:30 at 9/26/2016, a state of Michigan criminal investigation was misrepresented as a DEA administrative audit of the petitioner's medical records. At about 10:00 am, the respondents would return, subject Dr. Pompy to a two -step custodial interrogation, and continue to search and seize: 1)

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. Without consent, privilege, or notice, Robert Blair would reuse the improperly searched and seized data in an affidavit of support of a search warrant for the petitioner's medical records, 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 statements 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 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 Insurance Portability and Accountability Act (HIPAA), the 4th Amendment, and the "Federal Privacy Act 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. The search was unreasonable. The Lack of jurisdiction over the New-Jersey and Florida citizens is admitted by pleadings from Monroe County^{1, 13}.

1 .Tracy *Claire Micks Harm v Nichols at al*, Case 2:18-cv-13206-DPH-RSW ECF No. 20 filed 11/16/18 PageID.193 Page 3 of 5)

13 . 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16. Section IV).

medical records of the petitioner, 2) medical office checks already deposited to MBT Financial via the remote deposit scanner.

The respondents had inadequate policy or a failure to distribute that policy to Officers Robert Blair, Brent Cathey, 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, and 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 4th, 5th, and 8th amendment. In *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197 (1989), inadequate or improper training of police officers is often the grounds for a failure to act claim brought under tort liability or a Section 1983 civil rights claim.

It was widely known within the Monroe County law enforcement and Brian Bishop's office that the officers who participated in the 9/26/2016 raid could not reasonably have had confidence in the information sworn to in the 9/23/2016 warrant. Riddled with errors and false statements by Sean Street James Howell, and Robert Blair a second warrant was obtained and issued by the Michigan First District Court on 8/14/2017. Robert Blair executed that second search warrant

again at IPatientCare Inc., The latter is a company located, headquartered and domiciled in the state of New-Jersey. IPatientCare Inc. had no office and no employees in the state of Michigan in 2016. The Michigan First District Court lacks personal and subject matter jurisdiction of the New-Jersey resident, IPatientCare Inc., in obtaining the medical records of the petitioner. A pattern of deliberate indifferent to the constitutional rights of the disabled and their physicians abound.

The second execution was faxed on 8/14/2017, ostensibly for the same medical records already in possession of Brian Bishop, Robert Blair, BCBSMMIC, Leon Pedell M.D., Carl Christensen M. D., Marc Moore, and John Does. The 8/14/2017 faxed pretextual warrant instructed IPatientCare Inc., not to actually resend the medical records already in the possession of the joint enterprise, but that the intent of the warrant was to cover the errors associated with the 9/23/2016 warrants.

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

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

MCL 780.652 provides that grounds for issuance of the search warrants be proper. Magistrates Chaffin and Tina Todd, Judge Jack Vitale, and Robert Blair improperly issued, facially defective, third -party, extraterritorial, out of court search warrants. They violated MCL 780.652 to obtain the plaintiff's medical records. The M.C.L §600.761 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 warrants issued from the State of Michigan, to be validly executed in the State of New Jersey. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale acted outside the jurisdiction of their Monroe Michigan First District Court. The action outside of their jurisdiction, vitiate absolute immunity. A pattern or practice amounting to a policy of deliberate

indifference to clearly established State and federal laws, vitiate qualified immunity. The ADA provides for no absolute or 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. 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. In violation of MCL 780.657, Magistrates Chaffin and Tina Todd, Judge Jack Vitale exceeded the jurisdiction and authority of the 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. In violation of the Michigan Code of Judicial Conduct, Canon 3 (B) (C), and MCR 2.003(C)" regarding potential conflict of interest, Judge Jack Vitale refused to recused himself, and issued and improper Order ¹⁸.

¹⁸ .Portfolio Recovery Associates LLC v. Lesly Pompy, Case No 20G 1162 GC. Mich. 1st Distr. Court (2020)

On 8/14/17, Magistrate Jessica Chaffin issued a second search warrant after erasing the name of the issuing court. On 8/15/2017, Robert Blair of the Michigan State Police faxed a pretextual extraterritorial search warrant for the petitioner medical records to IPatientCare Inc. of New-Jersey. 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 face 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. Such inconsistency constitutes a finding of bad faith, and reversible error associated with the search warrants. 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. The materials, including the plaintiff's medical records, were not logged in the Monroe City Police via an evidence technician in an evidence room. Evidence, including iPhone, IPAD, and IPOD has disappeared without a trace. MANTIS, the Michigan State Police, Robert

Blair, and Marc Moore has not authenticated any evidence, nor have they demonstrated the absence or presence of counterfeit pills. As the news of the patients in the Kisonas Zone of Danger expanded, physicians of the community and beyond, and of Promedica Monroe Regional Hospital and beyond, feared that they would be raided next, abandoned patient considered disabled under the American Disability Act. Medical abandonment causes loss of opportunity to receive medical treatment in the class of disabled people to which the plaintiff belongs. The impaired access to medical care has injured patients, including the plaintiff, who are disabled by chronic pain ²⁸.

B. The State Court Proceedings

Without resolving the case, summary disposition was granted to the Monroe City Police ¹.

C. The District Court Proceedings

The dismissal of the petitioner represents a reversible error arising out of an improper search and seizure. Michael Hendricks of HHS/OIG defaulted.

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.

28- Tracy Clare Micks Harm, et al v. William Paul Nichols et al, Consolidated case. 2.18-cv-12634, E.D Michigan. ECF 44-2. Filed 2-27-19. Page ID 918. P 14 of 20. Paragraph 52

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 walking imbalance, repetitive falls, unnecessary sharp shooting burning aching, disabling pain and suffering from Charcot Marie Tooth 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 defendants 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, 5th and 14th Amendment, as to liberty interest to medical treatments , 2) an unlawful search and seizure under the 4th 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 5th 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 (4th 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 8th 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

I . Where the petitioner's fundamental right to medical treatment is violated under conflict of – unsettled area of laws, statutes and guidelines - 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., at the Affordable Care Act, 42 U.S.C. §18116, et seq, Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5th Vital Sign," EMTALA (Emergency Treatment and Labor Act) laws, the Controlled Substance Act (CSA 802 (56)(c)), the Drug Addiction Treatment Act of 2000 (Data 2000) under SAMSHA, PROP Guidelines, CDC Guidelines, and the pharmacist's corresponding responsibility under CFR 1306.04 (a) ratifying a prescription for controlled substances, is there a basis for the use of strict scrutiny for judicial review of a warrantless search and seizure of his PDMP data and his medical records ?

A . Where there is an expectation of privacy, the Fourth Amendment, is a clearly established law that provides that the petitioner be secured against unreasonable search and seizure in the affairs, things, and person of the petitioner. The 4th Amendment is a fundamental right of the people of the United States.

On 9/26/2018 at about 08:30 AM, DEA agent Brian Bishop and William Chamulak searched and seized the medical records of Dr. Pompy, while misrepresenting a Michigan State Police criminal investigation as a warrantless administrative DEA inspection. Such conduct violated Title 21 USC Codified CSA §879. Under the show of force, the party denied Dr. Pompy right to counsel, and coerced the released of privileged medical records of patients undergoing substance abuse treatment. The medical records of those patients are privileged under C.F.R 42 2.61- 2.67. A court order was necessary, under C.F.R 42 2.61- 2.67, prior to the acquisition of the medical records. Brian Bishop and William Chamulak never filed the documents with the clerk of the District Court of the Eastern District of Michigan. Such conduct violated 21 USC Codified CSA §880 (4). OIG/HHS hid under FOIA Exemption (b)(7)(A).

Where the physician determines the legitimate medical purpose for the issuance of the prescription pursuant to Title 21 USC Codified CSA § 802 (56) (C), the practitioner determines the legitimate prescription. The DEA's discrimination action against doctors is: 1) not rationally related to a legitimate government outcome, and 2) is not narrowly tailored to serve a compelling government interest.

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Strict Scrutiny basis is a judicial review is indicated where a fundamental right has been violated. The respondents inspected the medical records, personal identification data, and PDMP data of the petitioner, from a search warrant obtained on 9/26/2016 and 8/14/2017. The search warrants resulted from observations, that the respondents particularly - Robert Blair, Brian Bishop, and James Stewart aka James Howell - made in violation of the constitutional rights of the petitioner. The search and seizure was unreasonable.

Under CFR 42 § 2.61-2.67, the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., the Affordable Care Act, 42 U.S.C. §18116, et seq, Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5th Vital Sign," EMTALA (Emergency Treatment and Labor Act) laws, the Controlled Substance Act (CSA 802 (56)(c)), the pharmacist's corresponding responsibility under CFR 1306.04 (a), the petitioner was entitled to medical care.

HIPAA provides for a possessory interest in both the content and the privacy of the petitioner's medical records. The plaintiff had a fundamental right in the possessory interest of her chart. A joint enterprise, acting under the color of law as state actors, comprised of Blue Cross Blue Shield of Michigan Mutual Insurance Company (" BCBSMMIC) , Blue Cross Blue Shield Association (BCBSA) HHS/OIG,

the DEA (Drug Enforcement Administration), MANTIS (Monroe Area Narcotic Team Investigation Service) among others, participated, funded, aided , abetted, encouraged an illegal search and seizure of the petitioner's medical records and personal identification data. The stored data of the petitioner is beyond the control of the petitioner. Where a reasonable expectation of privacy existed in the medical records, the improper search and seizure constitute a violation the 4th amendment. The 4th Amendment prohibition against unreasonable search and seizure represents a violation of fundamental rights. The government and the state actors lack a compelling interest in committing the unlawful search and seizure. The plaintiff has standing for judicial review under a strict scrutiny basis.

. Under Carpenter ⁴, 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. The injury caused to the doctors and patients are not rationally related to a legitimate government outcome. The writing of controlled substance prescription for dropped 44% over the past decade, and yet the overdose death rate soared ¹¹.

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

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

Where under a PDMP (Prescription Drug Monitoring Program) data, patient's medical data is involuntary given to the state of Michigan, and an unconsented, warrantless, search and seizure of the patient's PDMP data occurs, is improper. The unlawful search is not related to compelling government outcome. Unlawful searches of PDMP data, directly and substantially interfere with petitioner's right to medical treatments under 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's Act. Carpenter should apply here as well. Pursuant to *Carpenter*, if law enforcement performed a warrantless search and seizure of PDMP (Prescription Drug Data Monitoring Program) data, would represent an unlawful search and seizure, and trigger the exclusionary rule.

II . Where the state has a legitimate interest in reducing overdose drug deaths, does a private entity, such as BCBSMMIC or Qlarant, acting as agents of the state under the color of law, is the use of false medical records, false state of Michigan driver's license, false social security number, false documents, to coordinate the incarceration of non-white physicians, is that conduct related to a compelling government interest?

Authority: Federal Preemption under CSA 802 § (56) (c)

Under CSA 802 §(56) (c), the health care practitioner determine the appropriate doze of controlled substance pain medication prescribed to a particular patient. By means of false documents¹⁵, BCBSMMIC selects black physicians ¹⁴, such as Dr. Pompy, for criminal prosecution. HFPP prevent those selected physicians from practicing medicine in a race –neutral manner by coordinating selective enforcement of the Controlled Substance Act on the suspect group of physician. A duty to treat 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. Controlled substances illegally obtained from the street, are the dominant cause of drug overdose death ¹⁶, and not prescription drugs.

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14 . 2:19-CV-10785 ECF No 6-1 filed 3/22/2019 Page ID 64 Page 21 of 25. Paragraph 71

15 . 2:19-CV-10785 ECF No 6-1 filed 3/22/2019 Page ID 64 Page 21 of 25. Paragraph 69

16 . 2:19-CV-10785 ECF No 6-1 filed 3/22/2019 Page ID 64 Page 21 of 25. Paragraph 7

26 .Neil Anand, et al v. U.S. Department of Health and Human Services et al.

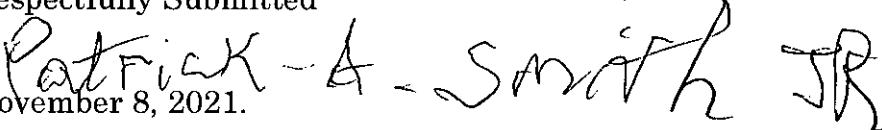
(Case No 1: 21- 01635 (D.C (2021))

The joint enterprise created a suspect class comprising of physicians who treat, and patients of the status of chronic pain, and/or addiction. A national pattern of deliberate violation of: 1) search and seizure laws, 2) payments, 3) violation of CFR 42 § 2.61-2.67, 4) violation of the American Disability Act §126, and 5) violation of the DATA Waived Program of SAMSHA (Substance Abuse and Mental Health Services Administration), occurred. Where the overdose death rate is mostly from illegal street drugs, the discriminatory practice of using false documents is not narrowly tailored to a compelling government interest.

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 8, 2021.

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CERTIFICATE OF COMPLIANCE

The document comply to the length and other requirements of the United States
Supreme Court

CERTIFICATE OF SERVICE

I, Patrick Andrew Smith Jr, certified to have filed the foregoing document with the Clerk of the Supreme Court by U.S Mail on November 8, 2021. A copy will be sent to the Respondent attorney of record as well. The Solicitor General of the United States will also be served at the address below:

Solicitor General of the United States

Room 5616

Department of Justice

950 Pennsylvania Avenue, N. W.

Washington, DC 20530-0001

Patrick Andrew Smith Jr

Patrick A. Smith Jr