

STATE OF INDIANA)
) SS: IN THE BARTHOLOMEW SUPERIOR COURT
COUNTY OF BARTHOLOMEW) CAUSE NUMBER:

STATE OF INDIANA INFORMATION FOR:

V.

ERIN MCMILLAN
DOB: 12/17/1978

COUNT 1:
Obtaining a Controlled Substance by Fraud
I.C. 35-48-4-14(c)
A Level 6 Felony

COUNT 2:
Furnishing False or Fraudulent Information
I.C. 35-48-4-14(b)(3)
A Level 6 Felony

COUNT 3:
Failure to Make, Keep, or Furnish a Record
I.C. 35-48-4-14(a)(3)
A Level 6 Felony

Count 1:

The undersigned states that on or between May 2, 2022 and May 18, 2022 in Bartholomew County, State of Indiana, Erin McMillan did knowingly or intentionally acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact All of which is contrary to the form of the statutes in such cases made and provided by I.C. 35-48-4-14(c) and against the peace and dignity of the State of Indiana.

Count 2:

The undersigned states that on or between May 2, 2022 and May 18, 2022 in Bartholomew County, State of Indiana, Erin McMillan did knowingly or intentionally furnish false or fraudulent material information in or omit material information from a report or other document required to be kept or filed under I.C. 35-48 as to the documentation of the dispensing or administration of a controlled substance contrary to the form of the statutes in such cases made and provided by I.C. 35-48-4-14(b)(3) and against the peace and dignity of the State of Indiana.

Count 3:

The undersigned states that on or between May 2, 2022 and May 18, 2022 in Bartholomew County, State of Indiana, Erin McMillan did recklessly, knowingly or intentionally fail to make, keep, or furnish a record or information required under I.C. 35-48 as to the documentation of the dispensing, administration, or destruction of a controlled substance contrary to the form of the statutes in such cases made and provided by I.C. 35-48-4-14(a)(3) and against the peace and dignity of the State of Indiana

I swear, under the penalty for perjury as specified by I.C. 35-44.1-2-1 that the foregoing is true to the best of my information and belief.

/s/ Grainne L. Kao

Grainne Kao, 34660-49
Deputy Attorney General
Indiana Office of the Attorney General
Medicaid Fraud Control Unit

Witnesses:

Justin White, MFCU

Erica Bowman

Stephanie Brown

Missy Henry

Bridget Malone

Don Rowe

May Muellenberg

Amber Thompson

Jessica Kidwell

Keeper of the Records, Millers Merry Manor

Keeper of the Records, InTouch Pharmaceuticals

STATE OF INDIANA)
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STATE OF INDIANA) CAUSE NO:
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VS.)
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ERIN MCMILLAN)
DOB: 12/17/1978)

AFFIDAVIT FOR PROBABLE CAUSE

I, Justin White, Drug Diversion Investigator for the Office of the Indiana Attorney General, Medicaid Fraud Control Unit, have probable cause to believe that Erin McMillan, in the County of Bartholomew, State of Indiana, did commit the following crimes:

I.C. 35-48-4-14(c) Obtaining a Controlled Substance by Fraud, a Level 6 Felony
I.C. 35-48-4-14(b)(3) Furnishing False or Fraudulent Information, a Level 6 Felony
I.C. 35-48-4-14 (a)(3) Failure to Make, Keep, or Furnish a Record, a Level 6 Felony

- 1) I participated in the investigation of the criminal offenses described in this affidavit. The statements contained in this affidavit are founded, in part, on information provided to me through conversations or written statements and information from employees of Millers Merry Manor and medical records related to this investigation. I believe these witnesses to be truthful and credible.
- 2) Because this affidavit is being submitted for the purposes of filing criminal charges, I have not included all facts that have been revealed during the course of this investigation. I have set forth only the facts that are believed to be necessary to establish the required foundation for probable cause.
- 3) Erin Rae McMillan (McMillan) was born on December 17, 1978. She is a Licensed Practical Nurse (LPN), License Number 27062907A, and was licensed in the State of Indiana on or about February 18, 2009. As an LPN, she is a "licensed health professional" as defined by Indiana Code 25-23-1-27.1. She was employed by Millers Merry Manor from 3/10/2020 to the early morning hours on 5-18-2022.
- 4) Millers Merry Manor is located at 7440 N Co Rd 825 E, Hope, IN 47246. Millers Merry Manor and their in-house pharmacy, InTouch Pharmaceuticals, is registered with the Indiana State Board of Pharmacy to dispense controlled substances. Under both state (I.C. 35-48-3-3 (e)(1)) and federal law (21 C.F.R. 1301.22), McMillan is exempted from registering separately with the state or federal government to handle controlled substances due to being an authorized employee of a registered party, to wit: Millers Merry Manor, as long as she is acting in the usual course of his employment.
- 5) Millers Merry Manor and its employees or agents, acting in the usual course of their employment, are required to maintain complete and accurate records under both Indiana and Federal laws pertaining to the dispensation of all controlled substances. Specifically, Indiana Code (I.C) 35-48-3-7 mandates that records be kept in conformance with the record-keeping

requirements of federal law and regulation and with any additional rules the Indiana State Board of Pharmacy issues such as 856 IAC 1-28.1-12. Title 21 United States Code (U.S.C.) 827(a)(3) and Title 21 Code of Federal Regulations (C.F.R.) 1304.22 (21 C.F.R. §1304.22) require a complete and accurate record be maintained for the dispensing or administration of a controlled substance to a patient, including:

- a. Number of units or volume of drug dispensed
- b. Name and address of the person to whom it was dispensed
- c. Date of dispensing
- d. Number of units or volume dispensed
- e. Written or typewritten name or initials of the individual who dispensed or administered the substance

In addition, Federal Regulation 21 C.F.R. § 1317.95(d) mandates any controlled substance that is removed for dispensing, but not actually given to the patient must be witnessed by another staff member and may be destroyed. If destroyed, then a drug destruction record must be made.

- 6) Millers Merry Manor utilizes InTouch Pharmaceuticals to provide pharmacy services to their extended care facility. Millers Merry Manor receives regular deliveries of medication including controlled substances from InTouch Pharmaceuticals in the form of daily deliveries from the pharmacy. Millers Merry Manor utilizes a "med cart" to store and dispense medications to patients within their facility. Nurses are assigned to the cart for their shift. The oncoming nurse counts the controlled substances on the cart with the nurse they are relieving at the beginning/end of the shift. Once the controlled substance have been counted together, the oncoming nurse takes control of the cart and is the only one with a key to access the cart until that nurse counts with the nurse set to relieve them. Assigned nurses remove medications from the med carts per a physician order and dispense them to patients. Nurses remove medication from the med cart with the key. When the drugs are removed from the med cart and dispensed to a patient, the nurse completes a Medication Administration Record (MAR) in the patient's chart and documents the date, time, and quantity of the drug remaining in the Controlled Substance Record/Report (CSR).
- 7) At Millers Merry Manor, the Medication Administration Report (MAR) is completed electronically and is known as the EMAR. A MAR is the report that serves as a legal record of the drugs administered to a patient by a health care professional. The Controlled Substance Record (CSR) is a record of controlled substances dispensed. The MAR and the CSR are a part of a patients' permanent record in their medical chart. The health care professional is required to document in the MAR each time that medication is administered.
- 8) On 5-17-2022 at around 4:30pm the Administrator, Erica Bowman (Bowman) and the Case Manager, Stephanie Brown (Brown), were notified by RN Charge Nurse Missy Henry (Henry) that there may be a missing pain medication card and sign-out sheet for resident **E.E. [REDACTED]** (E.E. [REDACTED]). It was discovered later that there was not a missing pain medication card or sign-out sheet for resident **E.E. [REDACTED]**. According to Bowman, any time there is an allegation, it initiates an investigation.
- 9) Bowman and Brown contacted McMillan and informed her that she was suspended pending an investigation regarding medications. McMillan and Bowman agreed upon a meeting time, at Millers Merry Manor, on Thursday 5-19-2022, at 11am. On Thursday 5-19-2022, at

11:10am, Bowman received a call from McMillan stating that she could not make the meeting. The meeting was rescheduled for Friday.

- 10) On 5-20-2022, at 10:10am, McMillan was interviewed by Bowman and Brown at Millers Merry Manor. McMillan was asked how medications were dispensed from the narcotics book on days that she was not working or physically in the building. McMillan stated she had no idea why they were dispensed and said that maybe she wrote down the wrong date. Furthermore, McMillan was asked why medications that are dispensed in the narcotic book are not being administered in the MAR. McMillan said that she is terrible at putting medications on the MAR.
- 11) On 5-18-2022, Bowman and Brown wrote a statement after reviewing video footage at Millers Merry Manor regarding McMillan's timeline of events from 5-12 through 5-13. On 5-12-2022, at 7:13pm, the medication cart is closed and specifically, the narcotics drawer is also closed. At 7:55pm, McMillan opens the narcotics drawer and pulled out multiple medication cards. On 5-13-2022, at 12:18am, the narcotics drawer is closed and then McMillan walks behind the nurse's station and places items in her purse. At 2:11am, McMillan is noted in the narcotics drawer and the narcotic book is never touched or opened. Then, at 2:18am and 2:22am, McMillan is noted back in the narcotics drawer. At 2:30am, McMillan is noted going behind the nurse's station and she removes something from her scrub top pocket and places it into her purse. At 4:01am, McMillan opens the narcotic count book and is noted signing multiple pages and at 4:20am, McMillan is noted opening the narcotic drawer and comparing the items in the drawer to the narcotic medication book. There is a shift change at 6:00am.
- 12) On 5-20-2022 at 10:01am, during the internal investigation at Millers Merry Manor, Nurse Practitioner (NP) Bridgit Malone (Malone) was contacted by Bowman and Brown. A statement was obtained regarding as needed (PRN) pain medications being administered frequently to resident [L.W. ██████████] ([L.W. ██████████]). Malone said that the facility Charge Nurse Don Rowe (Rowe), had contacted her requesting [L.W. ██████████]'s PRN medication be made routine as it was noted on the narcotic count sheet that [L.W. ██████████] was receiving doses of Tramadol 50mg tabs by the same associate often. After the conversation had ended with Malone, the narcotic sheet, and the Medication Administration Record (MAR) for [L.W. ██████████] for the previous thirty (30) days was pulled for review, as well as McMillan's timecard. Upon review of those documents, it was discovered that McMillan dispensed Tramadol 50mg on the narcotic count sheet for resident [L.W. ██████████] on days she was not working or present in the facility at Millers Merry Manor.
- 13) On 5-17-2022, 2022, staff members May Muellenberg (Muellenberg), Amber Thompson (Thompson), and Jessica Kidwell (Kidwell) were interviewed. During the interview, Muellenberg, Thompson, and Kidwell were asked if there were residents who have PRN medications but do not request them. [L.W. ██████████], [J.H. ██████████], [K.P. ██████████], and [W.H. ██████████] ([W.H. ██████████]) were identified as residents who have PRN medications but do not request them.
- 14) On 9-1-2022, I interviewed Bowman at Millers Merry Manor. During the interview she told me that her and Brown started to view internal video footage of the nurse's station and the hallways to observe if there is anything unusual. They noticed peculiar behaviors on video of McMillan. Some of those behaviors were removing medications from the narcotic box and then never leaving the area to go and administer the medications. They also saw her walk

around from where the medication cart was, back behind the nurse's station where the computers are, and it appeared that something was in her hand. She picked up a bag and puts something into her personal bag. Brown and Bowman were the only ones who watched the video footage. The video footage was requested from Millers Merry Manor, but it was not saved by the facility before it was erased. The video was on a 14-day loop before it is deleted. Therefore, the video was no longer available.

- 15) On 9-1-2022, I interviewed Brown at Millers Merry Manor. During the interview she told me that her and Bowman watched camera footage at the nurse's station for a short period of time. Brown said you could visibly watch McMillan get into the narcotic drawer at one point at take-out multiple narcotics at one time, put it into a cup, and go directly to her purse.
- 16) After reviewing the documentation of resident [L.W.]'s Tramadol 50mg, McMillan dispensed Tramadol twelve (12) times between 5-2-2022 and 5-13-2022. No doses were documented as being administered in the MAR by McMillan. Of those twelve (12) times narcotics were dispensed, McMillan dispensed two (2) doses when she was not working. Those doses were signed out on 5-2-2022 at 9am and on 5-8-2022 at 11pm.
- 17) On 5-18-2022 at 3:28pm, Bowman interviewed resident [L.W.]. Bowman asked [L.W.] if he ever experienced any pain and [L.W.]'s response was "nope" while he shook his head back and forth. Bowman asked if he ever needs to or has asked the nursing staff to provide him a pain pill and his response was "No ma'am."
- 18) Bowman and Brown continued their investigation at Millers Merry Manor which included an audit of all resident narcotic count sheets. During this auditing process it was discovered that additional resident's PRN medications were dispensed on the narcotic count sheet on days that McMillan was not working or present at the Millers Merry Manor. The PRN pain medications for all residents discovered during the investigation were never documented as being administered in the MAR.
- 19) After reviewing the documentation of resident [K.P.]'s Tramadol 50mg, McMillan dispensed Tramadol six (6) times between 5-10-2022 and 5-14-2022. No doses were documented as being administered in the MAR by McMillan.
- 20) Furthermore, McMillan failed to follow Physician orders when she gave Tramadol early on multiple occasions. Another staff member dispensed tramadol on 5-13 at 5:35pm, which was only 25 minutes before McMillan dispensed another dose for this resident at 6pm. McMillan dispensed another dose of Tramadol on 5-13 at 11pm, which was only five (5) hours after the last dose she had dispensed. All three doses on 5-13 were given less than 6 (six) hours apart of each other.
- 21) After reviewing the documentation of resident [L.B.]'s ([L.B.] Oxycodone/APAP Tab 5-325mg, McMillan dispensed Oxycodone four (4) times between 5-16-2022 and 5-18-2022. No doses were administered in the MAR by McMillan. Furthermore, McMillan dispensed a tablet of Oxycodone on 5-16 when she was not on the schedule to work. She also dispensed a tablet of Oxycodone on 5-17 at 6am when she did not clock in at Millers Merry Manor until 5:55pm.
- 22) After reviewing the documentation of resident [B.S.] ([B.S.]) Tramadol Hcl Tab 50mg, McMillan dispensed Tramadol six (6) times between 5-16-2022 and 5-18-2022. No doses were administered in the MAR by McMillan. Furthermore, McMillan dispensed Tramadol at 6:30pm and 11pm on 5-16 when she was not scheduled to work. McMillan also

dispensed Tramadol on 5-17 at 5am when she did not clock in at Millers Merry Manor until 5:55pm.

- 23) After reviewing the documentation of resident J.H. [REDACTED]'s (J.H. [REDACTED]) Tramadol Hcl Tab 50mg, McMillan dispensed Tramadol nine (9) times between 5-12-2022 and 5-18-2022. No doses were administered in the MAR by McMillan. Furthermore, McMillan dispensed Tramadol on 5-12 at 4pm when she did not clock in at Millers Merry Manor until 5:58pm. McMillan also dispensed Tramadol on 5-16 when she was not working on this day. She dispensed Tramadol on 5-17 at 4am when she did not clock in at Millers Merry Manor until 5:55pm.
- 24) After reviewing the documentation of resident G.R. [REDACTED]'s (G.R. [REDACTED]) Oxycodone Tab 5mg. McMillan dispensed Oxycodone five (5) times between 5-17-2022 and 5-18-2022. Three doses were not documented as administered in the MAR by McMillan.
- 25) A second narcotic count sheet of G.R. [REDACTED]'s was reviewed. It showed the McMillan dispensed Oxycodone ten (10) times from 5-11-2022 to 5-13-2022. Six (6) of those times were as needed or PRN doses which were not administered in the MAR.
- 26) Furthermore, on D.B. [REDACTED]'s second narcotic count sheet for Hydrocodone/APAP Tab 5-325mg, McMillan dispensed six (6) doses from 5-11-2022 to 5-13-2022. Four (4) of those doses were dispensed and administered in the MAR as a scheduled dose. Two (2) doses were dispensed as PRN doses and not administered in the MAR. Those doses were dispensed on 5-11 at 11:30pm and 5-13 at 1am.
- 27) This investigation reveals on at least one occasion between May 2, 2022, and May 18, 2022, Erin McMillan knowingly or intentionally acquired possession of a controlled substance; to wit: Tramadol, Hydrocodone, Oxycodone, by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact in violation of I.C. 35-48-4-14(c).
- 28) This investigation reveals that on at least one occasion between May 2, 2022, and May 18, 2022, Erin McMillan knowingly or intentionally furnished false or fraudulent material information in or omitted material information from a report or other document required to be kept or filed under I.C. 35-48 as to the documentation of the dispensing or administration of controlled substances in violation of I.C. 35-48-4-14(b)(3).
- 29) This investigation reveals that on at least one occasion between May 2, 2022, and May 18, 2022, Erin McMillan did recklessly, knowingly or intentionally fail to make, keep or furnish a record, a notification, an order form, a statement, an invoice, or information required under I.C. 35-48 as to the documentation of the dispensing or administration of controlled substances in violation of I.C. 35-48-4-14(a) (3).

I swear, under the penalty for perjury as specified by I.C. 35-44.1-2-1 that the foregoing is true to the best of my information and belief.

/s/ Justin White

Affiant, Justin White
Diversion Investigator
OAG-MFCU