

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

STATE OF INDIANA **INFORMATION FOR:**

V.
VICTORIA BELL
DOB: 11/11/1965

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

COUNT 2:
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 January 2, 2022 and January 3, 2022 in Laporte County, State of Indiana, Victoria Bell 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 January 2, 2022 and January 3, 2022 in Laporte County, State of Indiana, Victoria Bell 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:

Kathy Franko, MFCU Investigator
Justin White, MFCU Investigator
Christina Wilson, Interim Administrator, Aperion Care Arbors Michigan City
Nancy Wiilander, QMA
Kalpana Choudhary, RN
Alpha Baez, Director of Nursing
Keeper of the Records, Aperion Care Arbors Michigan City
Keeper of the Records, Indiana Board of Pharmacy

STATE OF INDIANA)	IN THE SUPERIOR COURT
) SS:	OF LAPORTE COUNTY
COUNTY OF LAPORTE)	CAUSE NO. _____
STATE OF INDIANA)	
)	
V.)	
)	
VICTORIA LEE BELL)	

AFFIDAVIT OF PROBABLE CAUSE

I, Kathy Franko, Diversion Investigator for the Indiana Attorney General Medicaid Fraud Control Unit, have good cause to believe that between January 2, 2022, and January 3, 2022, in the County of LaPorte, State of Indiana the above-named person committed the crimes of:

Obtaining a Controlled Substance by Fraud or Deceit – I.C. 35-48-4-14(c), a Level 6 Felony
 Failure to Make, Keep or Furnish Records - I.C. 35-48-4-14(a)(3), a Level 6 Felony

I am a Diversion Investigator with the Indiana Office of the Attorney General Medicaid Fraud Control Unit (MFCU) and have been employed by the MFCU since June 2015. I am currently assigned to the Winamac, Indiana Office. Prior to being hired by the MFCU, from November 1988 to June 2015, I was employed as a Trooper by the Indiana State Police (ISP). For approximately 22 of my 27 years with ISP, I was assigned as an Undercover Investigator in the Drug Enforcement Section (DES), and for approximately the last 10 years with ISP DES as a Diversion Investigator. As an Undercover/Diversion Investigator with ISP and with MFCU, I have been involved in numerous narcotics investigations involving diversion, theft of drugs from health care facilities, drug trafficking and health care providers prescribing controlled substances outside the scope of their practice or without medical necessity. I have received specialized training in the investigation of Medicaid Fraud, health care fraud, theft and related crimes, and the diversion of controlled substances by medical professionals.

- 1) I participated in the investigation of the offenses described within this affidavit. The statements contained in this affidavit are based in part on information provided by conversations with and written statements and information from employees of Aperion Care Arbors Michigan City (“ACAMC”). I believe these witnesses to be truthful and credible.
- 2) Because this affidavit is being submitted for the purpose of securing an arrest warrant, I have not included each and every fact that has been revealed through the course of this investigation. I have set forth only the facts that are believed to be necessary to establish the required foundation for issuance of the requested warrant.
- 3) Victoria Lee Bell (“Bell”) was born November 11, 1965. She is a licensed Registered Nurse (RN), licensed by the State of Indiana on September 1, 1989, License Number 28107223A. Bell was a contracted employee at ACAMC through Staff In Time on January 2-3, 2022. Staff in Time provides staffing services for long-term care facilities.
- 4) ACAMC is a skilled nursing facility/Nursing Home, located at 1101 East Coolspring Avenue, Michigan City, LaPorte County, Indiana 46360. ACAMC 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), Bell 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: ACAMC, as long as she is acting in the usual course of her employment.

- 5) ACAMC 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 and administration 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 including 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) requires that 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) ACAMC utilizes medication carts to store and dispense medications to patients within their facility. Assigned nurses remove medications from the medication cart per a physician order and administer to the patients. When drugs are removed from the medication cart, and dispensed to a patient, the nurse completes a Medication Administration Record (MAR) or an Electronic Medication Administration Record (EMAR) and documents the date, time and quantity of the drug remaining on the Controlled Substance Record/Report (CSR).
- 7) A MAR/EMAR is the report that serves as a legal record of the drugs administered to a patient by a health care professional. The MAR/EMAR and the CSR are a part of patients' permanent record in their medical chart. The health care professional is required to document in the MAR/EMAR and the CSR each time that medication is administered.
- 8) On January 4, 2022, ACAMC Interim Administrator Christina Wilson reported a medication card issued to Resident **R.S.** containing 5 mg oxycodone Immediate Release (IR) tablets and the corresponding CSR were missing. An investigation was initiated.
- 9) ACAMC employee, QMA Nancy Wilander ("Wilander") reported in a handwritten statement she received and signed for RS' pharmacy delivery of 28 tablets of 5mg oxycodone. Wilander said she gave them to RN Kalpana Choudhary ("Choudhary").
- 10) Choudhary advised in her handwritten statement, on January 2, 2022, during her 2:00 p.m. to 10:00 p.m. shift, she received a delivery from Pharmscript of 28 tablets of 5 mg oxycodone IR for RS. Choudhary put the oxycodone in the medication cart and attached the CSR to the file. At the end of her shift, Bell relieved Choudhary. They counted the medication cart together and nothing was missing. Choudhary turned the medication cart keys over to Bell.
- 11) Bell's relief nurse didn't show up that day, so Bell stayed after her scheduled shift and Choudhary was called in early to relieve Bell on January 3, 2022. Choudhary said when she arrived to work on January 3, 2022, and took over the medication cart and keys, she didn't count with Bell. Choudhary discovered RS' card of oxycodone, and the CSR were missing during her shift that day after Bell left. She reported it immediately to her supervisor, Director of Nursing Alpha Baez.
- 12) According to the ACAMC work schedules, Choudhary clocked in on January 2, 2022, at 1:47 p.m. and out at 10:30 p.m. Bell clocked in on January 2, 2022, at 10:44 p.m. and out on January 3, 2023, at

12:21 p.m. Choudhary clocked in on January 3, 2022, at 10:32 a.m. and out at 11:10 p.m.

- 13) The physician order for RS was to give 2 tablets of 5mg oxycodone via G-tube every 6 hours for pain management. The oxycodone was scheduled to be administered at 12:00 a.m., 6:00 a.m., 12:00 p.m. and 6:00 p.m. During her shift, Bell documented on the EMAR she administered 2 oxycodone to RS on January 3, 2022, at 12:00 a.m. (pain level 6) and again at 6:00 a.m. (pain level 6).
- 14) According to ACAMC's progress notes for RS, on January 2, 2022, at 6:03 p.m., and again on January 3, 2022, at 7:54 p.m., Choudhary entered notes that she was waiting for the oxycodone to be delivered from the pharmacy. On January 4, 2022, at 4:47 a.m. ACAMC Director of Nursing (DON) LPN Alpha Baez entered a note that the oxycodone was reordered, and the doctor was made aware a new prescription was needed.
- 15) On January 6, 2022, Bell responded to Wilson via email regarding RS' missing oxycodone. Bell said, "I am writing this statement in regards to the medication cart on 300 unit. I last worked on the 300 unit on Sunday 1/2/2022 to Monday morning 1/3/2022. When I counted off with on-coming nurse on Monday 1/3/2022 morning, there was no discrepancies noted, all medications were accounted for and count was correct. Keys to the medication cart were then given to on-coming nurse. At this point, I clocked out for end of shift."
- 16) On March 14, 2023, Medicaid Fraud Control Unit (MFCU) Diversion Investigator Justin White (White) and I interviewed Bell at her home. The interview was recorded. I explained to them we are civilian investigators, not police officers and she could ask us to leave at any time. I told them we do gather evidence in our investigations for criminal and professional licensing complaints. After gathering information on Bell's nursing background, I went over the details of this case and RS's missing oxycodone and CSR. Bell remembered RS. Bell initially denied she stole RS's oxycodone. After White confronted Bell with the evidence, I noticed Bell's voice and mannerisms became shaky. Her mouth seemed dry. Her voice was shaky, and she stumbled over her words. Later in the interview, Bell admitted to stealing controlled substances from this facility. Bell said she has severe back problems and needs surgery but doesn't want to have the surgery. She said there are times when she can't even get around. Bell said she is under a lot of stress and has a teenage son to take care of. Bell said ACAMC has an antiquated system with the medication cards and carts. Bell admitted she stole RS' oxycodone but didn't think she took the whole card. I told her 28 tablets were delivered for RS, along with the CSR. Bell said she remembered taking some of RS' oxycodone but couldn't remember how many. I asked Bell if there were any other residents at ACAMC she took medications from and she told me no.
- 17) My investigation revealed that between January 2, 2022, and January 3, 2022, Victoria Bell recklessly, knowingly, or intentionally failed to make, keep, or furnish a record, a notification, an order form, a statement, an invoice, or information required under this article in violation of I.C. 35-48-4-14(a)(3).
- 18) My investigation revealed that between January 2, 2022, and January 3, 2022, Victoria Bell knowingly or intentionally acquired possession of a controlled substance; to wit: oxycodone, a Schedule II Controlled Substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact in violation of I.C. 35-48-4-14(c).

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/ Kathy A. Franko, April 27, 2023

Affiant, Kathy A. Franko, Diversion Investigator
OAG-MFCU