

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

SUPERIOR COURT OF LAKE COUNTY
CRIMINAL DIVISION
CROWN POINT, INDIANA

STATE OF INDIANA)
)
 V.)
)
KANDICE L. DUKE)
DOB: 7/26/1980)

CAUSE NUMBER. 45

INFORMATION

COUNT I

OBTAINING A CONTROLLED SUBSTANCE BY FRAUD OR DECEIT (a Level 6 Felony)

Nick Anderson, Investigator with the Medicaid Fraud Control Unit of the Indiana Attorney General's Office, upon oath, says that:

On or between February 23, 2021 and February 24, 2021, in Lake County, State of Indiana, Kandice L. Duke, while working as a nurse at Symphony of Crown Point, did knowingly or intentionally acquire possession of a controlled substance, to-wit: Hydrocodone prescribed for a resident at the facility, by fraud, deceit or subterfuge;

contrary to I.C. 35-48-4-14(c) and against the peace and dignity of the State of Indiana.

COUNT II

OBTAINING A CONTROLLED SUBSTANCE BY FRAUD OR DECEIT (a Level 6 Felony)

Nick Anderson, Investigator with the Medicaid Fraud Control Unit of the Indiana Attorney General's Office, upon oath, says that:

On or between February 23, 2021 and February 24, 2021, in Lake County, State of Indiana, Kandice L. Duke, while working as a nurse at Symphony of Crown Point, did knowingly or intentionally acquire possession of a controlled substance, to-wit: Alprazolam prescribed for a resident at the facility, by fraud, deceit or subterfuge;

contrary to I.C. 35-48-4-14(c) 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/ Nick Anderson

Nick Anderson, MFCU Investigator
AFFIANT

Subscribed and sworn to before me and approved for prosecution on June 12, 2023.

/s/ Maureen O'Donnell

MAUREEN O'DONNELL
DEPUTY ATTORNEY GENERAL

WITNESSES: N. ANDERSON, L. AUSTIN, E. BAILEY, N. BRADLEY-SYKES, N. DAWKINS, J. FITZGERALD, B. FURIAK, R. HARRELL, J. VILLARS

PUBLIC VERSION

STATE OF INDIANA) IN THE LAKE COUNTY COURTS
) SS:
COUNTY OF LAKE)

STATE OF INDIANA)
)
VS.)
)
KANDICE L. DUKE)
DOB: 7/26/1980)

AFFIDAVIT FOR PROBABLE CAUSE

I, Nick Anderson, a Drug Diversion Investigator for the Office of the Indiana Attorney General, Medicaid Fraud Control Unit, have probable cause to believe that Kandice Duke, in Lake County, Indiana, did commit the following crime:

Obtaining a Controlled Substance by Fraud or Deceit I.C. 35-48-4-14(c) a Level 6 Felony

1. I am Nick Anderson, a Drug Diversion Investigator for the Office of the Indiana Attorney General, Medicaid Fraud Control Unit ("MFCU"). I am currently assigned to the Indianapolis, Indiana office. Prior to being a Drug Diversion Investigator, I worked as an Abuse and Neglect Investigator with the Office. I am a graduate of Indiana University Bloomington with a Bachelor of Art's degree in Criminal Justice and Psychology. I am also a graduate from the Indiana Law Enforcement Academy Tier 3 program.
2. 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 Symphony of Crown Point. I believe these witnesses to be truthful and credible.
3. Because this affidavit is being submitted for the purpose of establishing probable cause, I have not included 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 probable cause.
4. Our office initially received a complaint on March 24, 2021, from Symphony of Crown Point in Crown Point, IN, concerning Kandice Duke. The complaint was originally submitted by the Symphony of Crown Point Administrator Emily Bailey ("Bailey"). The complaint stated that on February 24, 2021, several medications were discovered to be missing from the facility medication cart, including: 23 Alprazolam (Xanax) 1mg pills for resident R.D. [REDACTED]; 7 Hydrocodone-Acetaminophen (Norco) 10-325mg pills for resident T.H. [REDACTED]

██████; and an unknown number of Oxycodone-Acetaminophen (Percocet) 10-325mg pills for resident ██████ R.M. ██████. During the course of interviewing staff about the situation, Licensed Practical Nurse (“LPN”) Kandice Duke admitted to taking the pills from the medication cart.

5. I had the case assigned to me for investigation on April 4, 2022. I learned the following information by reviewing documentation obtained by the previous MFCU investigator, which included records from the facility’s internal investigation into the matter and Duke’s personnel file from the facility. I also received a copy of the police report made by Officer Villars with the Crown Point Police Department, who responded to the facility on February 24, 2021. I subsequently conducted an audio recorded interview of Director of Nursing (“DON”) Brittney Furiak (“Furiak”) on June 14, 2022.
6. Kandice Lennay Duke (“Duke”) was born July 26, 1980. She is an LPN, licensed by the State of Indiana on November 29, 2006 (License Number 27058607A).
7. Symphony of Crown Point is located at 1555 S. Main Street, Crown Point, Lake County IN 46307. Symphony of Crown Point 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), Kandice Duke is exempt 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: Symphony of Crown Point, as long she is acting in the usual scope of her employment.
8. Symphony of Crown Point 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 relating to the dispensing of all controlled substances. Specifically, Indiana Code (I.C) 35-48-3-3 mandates that records be kept in conformance with the record-keeping requirements of federal law and regulations and with any additional rules the Indiana State Board of Pharmacy issues. 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 dispense.
 - e. Written or typewritten name/initials of the individual who dispensed the substance.

In addition, Federal Regulation 21 C.F.R. § 1317.95(d) mandates that 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.

9. Symphony of Crown Point utilizes a locked medication cart to store and dispense medications within their facility. Assigned nurses remove medications from the medication cart per a physician's order and dispense to the patients. When the drugs are removed from the medication cart, the nurse marks the drug information on a Controlled Substances Record ("CSR"). A CSR is a sheet that is used by nurses to track controlled substances that are pulled for administration to patients. It can also be referred to as a narcotic sheet. The nurse must sign their initials on the sheet and note the date, time, quantity of drug removed, and quantity of drug remaining when taking out a narcotic for administration. Each patient has a narcotic sheet that corresponds with a specific controlled substance they have at the facility for tracking purposes. Drugs in pill form are typically contained in a punch-out card (referred to by staff at Symphony of Crown Point as a "bingo card"). Once the bingo card is empty, the nurses tear off the resident's name from the card and the narcotic sheet and put them in the shred box located at the nursing station. The remainder of the bingo card and narcotic sheet are then thrown in the trash.
10. When the drugs are administered to the patient, the nurse must complete an entry on the patient's Medication Administration Record ("MAR"). The MAR documents the date, time, and quantity of the drug dispensed. A MAR is the report that serves as a legal record of the drugs administered to a patient by a health care professional. The MAR is a part of a patient's permanent record in their medical chart. The health care professional is required to document in the MAR each time that medication is administered.
11. On February 24, 2021, nurse Natasha Dawkins ("Dawkins") noticed that there were Xanax pills missing for resident [REDACTED] R.D. [REDACTED]. Dawkins knew that she'd seen the Xanax pills the previous shift, so when she couldn't find them, she reported it to the unit manager, Nikia Bradley-Sykes, who then reported it to DON Furiak. Furiak initially thought that the medications may have accidentally been destroyed or that a nurse might have inadvertently thrown the card in the shred box.
12. Furiak found three narcotic sheets that were torn up by hand and put into the shred box. Furiak was concerned that the sheets were torn up by hand because it suggested that it was not an accident. Furiak tried to tape the narcotic sheets back together and scan them, which is why the copies I received look jagged. There were also three empty bingo cards put into the shred box. The cards were Xanax belonging to resident [REDACTED] R.D. [REDACTED]; Norco belonging to resident [REDACTED] T.H. [REDACTED]; and Percocet belonging to resident [REDACTED] R.M. [REDACTED].
13. Furiak went to look at the schedule to see who would have had access to the medications at the time they were believed to have gone missing and found Kandice Duke's name. Kandice Duke worked the night shift from 11 pm on February 23, 2021 to 7am February 24, 2021, so she would have had access to the missing medications. Furiak reached out to Duke by telephone and describes Duke's story as being "all over the place." Duke was saying things like, "I had them, I just set them down and I don't know what happened to them." "I never saw that one, it was a different one." Furiak said Duke was changing her story a lot. Since

Duke's story was unreliable, a meeting was set up for March 1, 2021, with Duke, Furiak, and Bailey to discuss the incident.

14. According to Furiak's notes regarding information learned during the facility's internal investigation, pharmacy medications arrived at the facility around 12am on February 24, 2021, during Duke's shift. A Qualified Medication Aide ("QMA"), Lorenzo Austin ("Austin"), received the medications from the pharmacy when they arrived around 12am and gave them to the designated units. Austin gave a new card of Norco for [REDACTED] T.H. [REDACTED] to Kandice Duke. According to the count sheet discovered by Furiak in the shred box, there should have been 7 tablets of Norco left for [REDACTED] T.H. [REDACTED] on the bingo card that was found in the shred box. It was later in the shift when nurse Natasha Dawkins noticed the missing Xanax. The medications unaccounted for were 7 Norco pills for [REDACTED] T.H. [REDACTED], 23 Xanax pills for [REDACTED] R.D. [REDACTED], and an unknown number of Percocet pills for [REDACTED] R.M. [REDACTED].
15. On March 1, 2021, Duke came to the facility for a meeting with Bailey and Furiak regarding the missing medications. Duke said that she came on shift at 11pm February 23 after all other nurses had already counted the narcotics. During the meeting, Duke eventually admitted taking patient medications. Furiak asked Duke if she could return the medications, but Duke said she couldn't because they were gone. Furiak had Duke provide a written statement regarding the stolen medications.
16. The following is LPN Kandice Duke's written statement she provided related to the medications she'd taken from the facility:

To whom this may concern. I, Kandice Duke, misappropriated medications that wasn't prescribed to me. I took medication due to previous surgery I underwent. To my assumption the misappropriation of medication patient was discharged. The medication I had took was Xanax about 19 pills Norco 7 pill. Due to undergoing amputation of toe and emotional stress and anxiety. I do understand what I did was wrong. I'm willing to seek professional help. The house I took medication to the person took pills I cannot return medication because they are gone.

The date 2-24-21 Tuesday 11-7...Kandice Duke 3-1-21.

17. During the March 1st meeting, Officers Harrell and Fitzgerald with Crown Point PD were dispatched to Symphony of Crown Point facility for a follow-up on the incident. Upon arrival to the facility they spoke with Bailey, who informed them that Duke was in a conference room with Furiak writing a confession. Officers Harrell and Fitzgerald went into the conference room to speak with Duke. When the officers entered the room, Duke identified herself, became very emotional, and repeatedly stated how sorry she was for the theft that occurred.
18. Norco is a Schedule II Controlled Substance used to treat moderate to severe pain. Xanax is a Schedule IV Controlled Substance typically used to treat anxiety.

19. This investigation reveals that on at least one (1) occasion between the time period of February 23, 2021, and February 24, 2021, Kandice Lennay Duke did knowingly or intentionally acquire possession of a controlled substance; to wit: Hydrocodone-acetaminophen (Norco) and/or Alprazolam (Xanax), by fraud, deceit, or subterfuge, 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/ Nick Anderson

Nick Anderson

Drug Diversion Investigator

Indiana Office of the Attorney General

Medicaid Fraud Control Unit