

# United States District Court

for the  
Western District of New York



**United States of America**

Case No. 19-MJ-5158

v.

**Kelsey A. Mulvey**

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*Defendants*

## **CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

### **COUNT 1**

Beginning in or about February 2018, and continuing through in or about June 2018, the exact dates being unknown, in the Western District of New York, the defendant, KELSEY A. MULVEY, did knowingly with reckless disregard for the risk that another person would be placed in danger of death or bodily injury, and under circumstances manifesting extreme indifference to such risk, did tamper with a consumer product that affected interstate commerce, and the containers for such products by removing, mixing and diluting the contents of vials containing hydromorphone maintained at Roswell Park Comprehensive Cancer Center, located at 665 Elm Street, Buffalo, NY, knowing the vials were intended to be dispensed to patients.

**All in violation of Title 18, United States Code, Section 1365(a).**

### **COUNT 2**

Beginning in or about February 2018, and continuing through on or about June 2018, the exact dates being unknown, in the Western District of New York, the defendant, KELSEY A. MULVEY, did knowingly intentionally, unlawfully obtained quantities of hydromorphone, a Schedule II controlled substance, by fraud, forgery; deception; and subterfuge.

**All in violation of Title 21, United States Code, Section 843(a)(3).**

**COUNT 3**

Beginning in or about February 2018, and continuing through in or about June 2018, the exact dates being unknown, in the Western District of New York, the defendant, KELSEY A. MULVEY, did knowingly and in violation of Part C of the Health Insurance Portability and Accountability Act of 1996, obtain individually identifiable health information relating to individuals with the intent to use such information for commercial advantage and personal gain, in violation of Title 42, United States Code, Sections 1320d-6 (a)(2), (a)(3), and (b)(3).

**All in violation of Title 18, United States Code, Section 2.**

This Criminal Complaint is based on these facts:


☒ Continued on the attached sheet.

  
Complainant's signature

CHARLES A. ARGENTO  
SPECIAL AGENT  
U.S. FOOD AND DRUG ADMINISTRATION  
Printed name and title

Sworn to before me and signed in my presence.

Date: May 31, 2019

  
Judge's signature

City and State: Buffalo, New York

HONORABLE MICHAEL J. ROEMER  
UNITED STATES MAGISTRATE JUDGE  
Printed name and title

**AFFIDAVIT**

STATE OF NEW YORK    )  
COUNTY OF ERIE        ) SS:  
CITY OF BUFFALO        )

I, **Charles A. Argento**, being duly sworn, deposes and says:

**INTRODUCTION AND AGENT BACKGROUND**

1. I am a Special Agent with the Food and Drug Administration, Office of Criminal Investigations (hereinafter "FDA") and as such, I am responsible for conducting criminal investigations involving violations of the Federal Food, Drug, and Cosmetic Act (hereinafter "FFDCA"), Title 21, United States Code, Section 301, *et seq.*, and other federal statutes enforced by the FDA. As a Special Agent with the FDA, your affiant is also an investigative law enforcement officer of the United States of America within the meaning of Section 2510(7) of Title 18 United States Code (USC).

2. Your affiant has been employed by the FDA as a Special Agent since August 2010. During my law enforcement career, I have conducted and participated in investigations targeting unapproved drugs and medical devices, counterfeit drugs, diverted drugs, theft of drugs, clinical trial fraud, health care fraud, misbranding, adulteration, and tampering of drugs and medical devices, including narcotics. I also periodically attend training courses as part of my employment. Based on my training, experience in law enforcement, and conversations with other FDA Special Agents and other Law Enforcement Officers, I am familiar with how drugs and medical devices are distributed throughout the

supply chain and how they could potentially be diverted or stolen by individuals employed within the supply chain. Previously, I was employed as a Special Agent with the Internal Revenue Service, Criminal Investigation Division and the United States Department of Labor, Office of Inspector General.

3. I make this affidavit in support of a criminal complaint charging **KELSEY MULVEY** with violations of Title 18, United States Code, Section 1365(a) (tampering with a consumer product), Title 21, United States Code, Section 843(a)(3) (acquiring or obtaining possession of a controlled substance by fraud), and Title 42, United States Code, Section 1320d-6(a) (obtaining or disclosing individually identifiable health information).

4. The information contained in this affidavit is based upon my personal knowledge and participation in this investigation, conversations with other law enforcement officers and local and state investigators who have participated in this investigation, interviews with witnesses, and the review of numerous documents obtained during the investigation. This affidavit does not purport to present all evidence developed during the course of this investigation. Rather, I have set forth only those facts that I believe are necessary to establish probable cause for issuing the requested criminal complaint for **KELSEY MULVEY**.

**THE RELEVANT CRIMINAL STATUTES**

5. As set forth in further detail below, this investigation has established probable cause to believe that **MULVEY** has committed violations of Title 18, United States Code, Section 1365(a) (tampering with a consumer product), Title 21, United States Code, Section 843(a)(3) (acquiring or obtaining possession of a controlled substance by fraud), and Title 42, United States Code, Section 1320d-6(a) (obtaining or disclosing individually identifiable health information).

6. Section 1365(a) of Title 18 of the United States Code provides in relevant part that:

- (a) Whoever, with reckless disregard for the risk that another person will be placed in danger or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product or attempts to do so-

7. Section 843(a)(3) of Title 21 of the United States Code provides in relevant part that:

- (a) it shall be unlawful for any person knowingly or intentionally –
  - ...
  - (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge...

8. Section 1320d-6(a) of Title 42 of the United States Code provides in relevant part that:

- (a) A person who knowingly and in violation of this part--

- (1) uses or causes to be used a unique health identifier;
- (2) obtains individually identifiable health information relating to an individual; or
- (3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b). For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.

#### **BACKGROUND OF THE INVESTIGATION**

9. The investigation has revealed that, during the period from February 2018 through June 2018, **MULVEY** knowingly and intentionally acquired or obtained possession of a controlled substance by fraud. Specifically, she used her position as a nurse to tamper with and steal vials of medication and pills while employed at Roswell Park Comprehensive Cancer Center (“Roswell Park”), located at 665 Elm Street, Buffalo, NY 14203. **MULVEY** tampered with vials of, and stole, hydromorphone (Dilaudid), methadone, and oxycodone, Schedule II controlled substances, and lorazepam, a Schedule IV controlled substance, from Roswell Park. **MULVEY** tampered with and stole medications from Roswell Park by taking vials of medication from the Pyxis machine, an automated medication dispensing system, which she had access to as a nurse.

**i. Pyxis Machine**

10. A Pyxis machine is an automated medication dispensing system used by many hospitals and health care facilities in the United States. A Pyxis machine reduces the cost that hospital pharmacies incur for carrying stock, increases the availability of billing and usage information and increases the productivity of hospital staff.

11. Roswell Park utilizes a Pyxis machine to assist in dispensing medications to its patients. At Roswell Park, Pyxis machines are located within each unit of the facility. Roswell Park's units are organized into floors (numbers) and subsections (cardinal direction). For example, a unit on the Sixth Floor in the north subsection would be called 6 North. Nurse assignments are primarily assigned by floor and subsection. Nurses use the Pyxis machines assigned to their units. For example, a nurse assigned to 7 North would normally only use the Pyxis machine assigned to 7 North and only use the machine assigned to 7 North for the treatment of the nurse's or 7 North's patients. Based on information learned during the course of the investigation, a nurse at Roswell Park could legitimately use a Pyxis machine assigned to a different unit, however, that occasion would be very rare and would require a special set of circumstances. During February 2018 through June 2018, Roswell Park allowed universal access to the Pyxis machine for the Roswell Park staff -- meaning that any nurse could go to any Pyxis machine and access medications, regardless of where they were assigned.

12. Pyxis Machines are designed to track activity and effectuate the proper administration of medications. The machine helps accurately dispense medication, while supporting pharmacy workflows. Thus, Pyxis machines have a certain set of procedures and requirements. Medical facilities such as Roswell Park utilize these procedures and augment them with additional procedures to accurately dispense medication. In order to use a Pyxis machine and administer the medications therein, the medical professional must follow these procedures. Pyxis machine system requires the employee to use a username and fingerprint scan. The procedure at Roswell follows these steps: First, an employee would log into the Pyxis system using a username and then fingerprint scan. Next, the employee would identify the patient to whom the employee would be administering medication and thereafter, the employee would identify the narcotic the employee would be withdrawing from the Pyxis machine. The drawer of the Pyxis machine would then open. The employee must enter the count (i.e., quantity of medication) of the selected medication into the Pyxis machine. The machine tracks the quantity of the medication and the time it takes for the employee to enter the count. Once the employee enters the count into the machine, the machine stops tracking the time for purposes of how long the drawer is open. If an employee wishes to cancel a transaction once the drawer is open, the employee hits cancel. The machine tracks this activity as "CANCELLED REMOVED." "CANCELLED REMOVED" indicates that the Pyxis machine drawer for the selected medication was accessed but the transaction was cancelled.



13. If the employee follows the normal processes after selecting the correct patient and medication, opening the drawer, and entering the count, the employee would then remove the medication, also known as “vending” the medication, take it to the patient, scan the patient’s wristband, and then scan the medication. The employee would then administer the medication and update the Electronic Medication Administration Record (“EMAR”)<sup>1</sup> and notate the date and time of administration, medication name, dose and route of administration, patient response to medications administered and effect of medication and legal signature and title of person administering the medication. To dispose of medication waste, which is a partial or full dose of medication that has not been administered to the patient, the Pyxis user and a witness will document the waste via the Pyxis system. Finally, the count of the Pyxis machine provides an accurate accounting of each medication in the machine. In the case of a “CANCELLED REMOVED”, the count would need to have the same count when the machine was initially accessed. In the case of a vended medication, the count would need to indicate a count minus the amount of the vended medication.

ii. **Background of KELSEY MULVEY**

14. **MULVEY** was a Registered Nurse at Roswell Park for approximately two years. **MULVEY** became a licensed nurse in New York State in May of 2016. **MULVEY** worked at Roswell Park as a Registered Nurse from July 21, 2016 until July 13, 2018. **MULVEY** worked full time (75 hours bi-weekly) and was assigned to 6 West. **MULVEY**

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<sup>1</sup> EMAR is the report that serves as a legal record of the drugs administered to a patient at a facility by a health care professional. Here, the EMAR is annotated via a Roswell Park employee’s initials.

was placed on administrative leave on June 28, 2018, pending further investigation of a large number of transactions associated with **MULVEY** that were identified as “CANCELLED REMOVED”, indicating that the Pyxis machine drawer for the selected medication was accessed but the transactions were cancelled. Many of these transactions were on floors and/or wings where **MULVEY** was not assigned and where she had no patients on those floors/wings. Because of the large amount of “CANCELLED REMOVED” transactions, among other things, Roswell Park inferred that **MULVEY** had removed and replaced controlled substances from the Pyxis machines. Roswell Park accused **MULVEY** of diversion and swapping controlled substances with water. **MULVEY** resigned in Lieu of Termination on July 13, 2018. Based on information learned during the course of this investigation, **MULVEY**’s conduct was not within the norms of the profession or norms within Roswell Park.

15. During the course of the investigation, law enforcement learned from multiple interviews that **MULVEY** has been to both inpatient and outpatient rehabilitation for drug addiction treatment since August 2018. She also has attended Alcoholics Anonymous, Narcotics Anonymous, Statewide Peer Assistance for Nurses (SPAN) and was also enrolled in the Professional Assistance Program (PAP) twice where she surrendered her nursing license both times for the duration of the treatment.

**PROBABLE CAUSE**

**A. Obtained Possession of a Controlled Substance by Fraud**

16. As described above, the proper procedure at Roswell Park for dispensing medication from the Pyxis machine, is for the staff member to administer it to the patient and, if there is any waste, two employees must be present for disposal. The administration of medication is annotated via the EMAR and waste is documented per the Pyxis.

17. Between in or about February 2018 and in or about May 2018, **MULVEY** vended nine medications from a Pyxis machine but did not notate in the EMAR that the medication was administered to any patient. There is also no indication of waste for the nine medications. All of the patients below were under the care of **MULVEY**. The following Chart A indicates which patients and medications **MULVEY** accessed. Chart A includes patient initials, the date and time the Pyxis machine was accessed, which drug was accessed, the floor/wing **MULVEY** accessed the Pyxis machine, and the quantity of medication vended by **MULVEY**.

**CHART A**

<b>Patient</b>	<b>Date</b>	<b>Time</b>	<b>Drug/Str.</b>	<b>Unit</b>	<b>Qty. Vended</b>
B.L.	2/21/2018	17:40	Oxycodone/5mg	6W	3
B.L.	3/12/2018	10:46	Dilaudid/30ml PCA	6W	1
B.L.	3/13/2018	13:12	Dilaudid/30ml PCA	6W	1
B.L.	3/13/2018	13:38	Dilaudid/30ml PCA	6W	1
B.L.	3/18/2018	10:09	Dilaudid/30ml PCA	6W	1
C.N.	3/27/2018	12:40	Ketamine NS/500m	6W	1
C.N.	4/1/2018	08:40	Dilaudid/30ml PCA	6W	1
A.H.	4/4/2018	14:27	Dilaudid/30ml PCA	6W	1
M.L.	5/21/2018	12:01	Ketamine NS/500m	6W	1

18. It is believed that **MULVEY** obtained possession of the above medications by fraud in violation of Title 21, United States Code, Section 843(a)(3). Since **MULVEY** did not administer the medication to the patient or follow the protocol to waste the medication, it is believed that she took the medication for her own personal use.

19. On four different occasions, May 5, 2018, June 24, 2018, June 26, 2018 and June 27, 2018, **MULVEY** came into work when she wasn't scheduled and accessed the Pyxis machine eleven times. Furthermore, on three of these dates, **MULVEY** was scheduled for

vacation -- June 24, 2018, June 26, 2018 and June 27, 2018. On these occasions, **MULVEY** came to Roswell Park and wore medical uniform scrubs. This was verified through a witness statement, video surveillance, and badge access provided by Roswell Park. During this time, **MULVEY** used the Pyxis machine, which required her username and fingerprint scan, to transact eleven transactions in the Pyxis machine, identified as "CANCELLED REMOVED", which indicates that the Pyxis machine drawer for the selected medication was accessed but the transactions were cancelled. Even though the transaction was cancelled, the pocket of medication and drawer can remain open. **MULVEY** had no legitimate reason to access the Pyxis machine for any of these transactions as she was not working and had no patients to treat at this time. It is further believed and discussed *supra*, that **MULVEY** had an addiction to hydromorphone (Dilaudid). Based on my experience and training, and information learned during the course of this investigation, **MULVEY** exhibited characteristics of a drug user and addict including when **MULVEY** came to the hospital on vacation days and attempted to pick-up extra shifts.

20. Chart B includes patient initials, the date and time the Pyxis machine was accessed, which drug was accessed, and the floor/wing **MULVEY** accessed the Pyxis machine when **MULVEY** was not scheduled to work. These transactions are recorded as **MULVEY's** transactions in the Pyxis machine because her username and fingerprint were used. **MULVEY** did not vend these medications, she only accessed then cancelled the transaction, aka "CANCELLED REMOVEDs." In addition, **MULVEY** was assigned to 6 West at the time.

CHART B

Patient	Date	Time	Drug/Str.	Unit
J.H.	5/5/2018	18:47	Dilaudid/30ml PCA	7W
J.H.	5/5/2018	18:54	Dilaudid/30ml PCA	7W
R.B.	6/24/2018	10:25	Dilaudid/30ml PCA	7W
R.B.	6/24/2018	10:27	Dilaudid/30ml PCA	7E
R.B.	6/24/2018	10:29	Dilaudid/30ml PCA	ICU
A.H.	6/26/2018	18:42	Dilaudid/30ml PCA	6N
A.H.	6/26/2018	19:01	Dilaudid/30ml PCA	6N
A.H.	6/26/2018	19:03	Dilaudid/30ml PCA	6E
A.H.	6/26/2018	19:15	Dilaudid/30ml PCA	7W
A.H.	6/27/2018	18:11	Dilaudid/30ml PCA	6N
A.H.	6/27/2018	18:19	Dilaudid/30ml PCA	6N

21. It is believed that **MULVEY** obtained possession of the above medications by fraud in violation of Title 21, United States Code, Section 843(a)(3). Since she accessed the above medications on her days off and had no medical necessity to access the Pyxis machine for any patients on those dates, it is believed that she took the medication for her own personal use by switching the narcotic with water or an unknown substance.

22. A Registered Nurse (Witness 1) at Roswell Park that worked with **MULVEY**, stated that on or about June 26, 2018, at the end of Witness 1's shift, Witness 1 went into the employee locker room and saw **MULVEY** there. Witness 1 said **MULVEY** had not worked at Roswell Park that day but **MULVEY** was wearing medical uniform scrubs. Witness 1 asked **MULVEY** if she was there picking up overtime. **MULVEY** explained she came in to work to file paperwork regarding an injury she sustained on the job. **MULVEY** said she had her scrubs on to fit in on campus. Witness 1 explained that if an employee is injured they have 48 hours to complete an accident form. The injury **MULVEY** was talking about occurred over a week before and so the story did not make sense.

23. Witness 1's locker and **MULVEY**'s locker were near each other. When **MULVEY** opened her locker, more than a dozen insulin type syringes fell onto the floor. Witness 1 said the syringes were used, re-capped and had blood at the ends. Witness 1 said that it was odd that those type of syringes had blood on them.<sup>2</sup> Witness 1 explained you do not "draw back" blood when giving insulin. **MULVEY** gathered the syringes and threw them back into her locker and said, "I can't believe I didn't put these in the sharps, I haven't been able to." Witness 1 described **MULVEY** as "a cat on a hot tin roof." **MULVEY** asked Witness 1 if there was a sharps container<sup>3</sup> in the utility room. Witness 1 told **MULVEY** that

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<sup>2</sup> An insulin syringe does not typically draw blood back. Insulin is administered with the insulin syringe "subcutaneously" (under the skin) in the subcutaneous (sub Q) tissue. There is typically no blood drawback.

<sup>3</sup> A sharps container is a hard plastic container that is used to safely dispose of hypodermic needles and other sharp medical instruments.

every patient room and medication room had sharps containers. Witness 1 said seeing the syringes concerned her, but she did not report what she saw in fear of being ostracized. She figured since it was only her and **MULVEY** in the locker room, it would be her word against **MULVEY's**. Witness 1 said **MULVEY** could be fussy and meticulous about certain things. Witness 1 also said that it was strange that **MULVEY** claimed to have forgotten to put the syringes in the sharps container.

24. In late 2017, **MULVEY** gave birth. The father of the baby is Employee-1. Employee-1 works at Roswell Park in the distribution department. When **MULVEY** returned back from maternity leave, she told everyone that she was unable to breast feed the baby because she could not produce enough milk. However, four months later, **MULVEY** began excusing herself so she could pump breastmilk. Witness 1 said looking back, it was just an excuse to leave the unit. Witness 1 stated Employee-1 and **MULVEY** were frequently seen together in the medication room. At the time, other Roswell Park employees did not think much of it because they were in a relationship.

25. Witness 1 said it would be unusual for a nurse to go to the other Pyxis machines in the units of the facility other than the one to which she Witness 1 was assigned. Witness 1 recalled only two instances in 13 years at Roswell Park where Witness 1 had to access a Pyxis on a different unit. When that happened, Witness 1 went to the Pyxis on the other side of the hall from where Witness 1 was assigned. Witness 1 never accessed a Pyxis unit on a different floor.



26. **MULVEY** had a green canvas bag that she took everywhere with her. Witness 1 recalled a time when **MULVEY** took a clear “patient belongings bag” and placed three containers of what appeared to be disinfectant wipes inside the bag. **MULVEY** stated she could not afford the wipes at the store and wanted to disinfect near the baby.

27. Based on my experience and training, and information learned during the course of this investigation, it is believed that the green canvas facilitated **MULVEY**’s diversion of controlled substances. With the amount of controlled substances **MULVEY** accessed, she would need something to conceal the controlled substances that she diverted. **MULVEY** had the bag on her person often and came in with the bag on days off.

28. On or about July 15, 2018, text messages were sent back and forth between **MULVEY**’s brother (“**TM**”) and **MULVEY**.<sup>4</sup> A portion of these texts are in Chart C. In summary, the text messages contain information about **MULVEY** talking to her brother, about her addiction to Dilaudid and the potential charges she may be facing.

**CHART C**

To	From	Date/time	Text Message
TM	MULVEY	7/15/2018 13:12	i was talking to the anesthesiologists in my medical group meeting and they seemed

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<sup>4</sup> The Federal Bureau of Investigation received text message conversations involving **MULVEY** from the phone of a third party. The third party provided consent to the Federal Bureau of Investigation for the contents of the third party’s phone. The third party’s phone lists **MULVEY** as a contact. The phone number listed in the third party’s phone matches Roswell Park’s information for **MULVEY**.

			impressed that I detoxed cold turkey without medical supervision from the Dilaudid
MULVEY	TM	7/15/2018 13:12	bg song don't talk to me is pretty real he got hooked on the shit
TM	MULVEY	7/15/2018 13:12	they said it's more dangerous than heroin detox because it's so clean
MULVEY	TM	7/15/2018 13:13	Well it wasn't really cold turkey u had the benzo to help take the edge off
TM	MULVEY	7/15/2018 13:13	but that heroin use is more dangerous because it's dirty
TM	MULVEY	7/15/2018 13:14	i haven't had cravings but I can still remember how it made me feel
TM	MULVEY	7/15/2018 13:14	i don't know the conversion lol
MULVEY	TM	7/15/2018 13:14	Yeah either way I give u props I could not of did it
MULVEY	TM	7/15/2018 13:15	I have to be under lock and key that's the only way to get me clean
TM	MULVEY	7/15/2018 13:15	everyone in the meeting with Dilaudid problems were medically detoxed they said
TM	MULVEY	7/15/2018 13:15	i don't know why I let it get so bad
MULVEY	TM	7/15/2018 13:16	See your brain is already trying to forget how bad it was u have to always remind yourself. You should of kept a journal
TM	MULVEY	7/15/2018 13:16	the only reason why i'm still sober is because I know there is no way to get it
TM	MULVEY	7/15/2018 13:16	I am keeping a journal
MULVEY	TM	7/15/2018 13:16	Good and good
MULVEY	TM	7/15/2018 13:17	It's fucked up even 50 cent said in that song " if you give birth I'll already be in love with your kid"
MULVEY	TM	7/15/2018 13:17	Just such evil
TM	MULVEY	7/15/2018 13:18	but it sucks tim because i know in my mind I would still do anything to do it one more time. i'm not going to tell mom that, but i still ache for 'one more', but i feel as if i'm not craving for it. i can't describe it
TM	MULVEY	7/15/2018 13:21	it's hard to be that motivated when i'm thinking about these crimes i'm up against
MULVEY	TM	7/15/2018 13:22	But I've had so much time away from it and so many consequences that my brain finally rewired

			itself. But if there was a loaded needle in front of me I can't tell you if I would do it or not. So I just steer clear
MULVEY	TM	7/15/2018 13:23	Fuck these crimes. Kelsey u can't worry about the future
MULVEY	TM	7/15/2018 13:23	U might even get probation
TM	MULVEY	7/15/2018 13:23	either way i'm going to lose my license
TM	MULVEY	7/15/2018 13:23	that's all i worked for in school
MULVEY	TM	7/15/2018 13:24	Well look at my story. Anyone can bounce back.
TM	MULVEY	7/15/2018 13:24	it's hard not to
TM	MULVEY	7/15/2018 13:24	i know

29. It is believed that the above text messages show that **MULVEY** had an addiction to Dilaudid and that she was concerned about being charged criminally for her narcotic diversion while employed at Roswell Park.

30. Based on information obtained during the course of the investigation and detailed below, between in or about February 2018 and in or about June 2018, **MULVEY** failed to administer the medication immediately for 81 patients. This information is based off the records of the Pyxis machine where **MULVEY** “vended”<sup>5</sup> the medication via Pyxis machine and the time that she charted as administered via the EMAR. In this case, accessed means that **MULVEY** used her username and fingerprint scan, selected a patient and medication, vended the medication, and administered the medication to a patient at least 10

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<sup>5</sup> Vending is a medical term to remove the medication from the Pyxis machine.

minutes after the medication was vended from the Pyxis machine.<sup>6</sup> Chart D shows all the patients **MULVEY** had accessed when it took more than 10 minutes for **MULVEY** time it took to administer the medication vended from the Pyxis machine. Chart D includes patient initials, the date and time the Pyxis machine was accessed, which drug was accessed, the floor/wing **MULVEY** accessed the Pyxis machine, the quantity of medication vended, the total time the medication was held, and when the medication was annotated as delivered to a patient in the EMAR, also known as the time of administration to the patient, or wasted by **MULVEY**:

CHART D

Patient	Date	Time Vended	Drug/Str.	Unit	Qty. Vended	Total Time Held	Time in EMAR
L.S.	2/13/2018	08:17	Oxycodone/5mg	6W	1	30 mins	Wasted
D.D.	2/13/2018	13:54	Methadone/10mg	6W	1	15 mins	14:09
L.S.	2/14/2018	13:53	Methadone/10mg	6W	1	21 mins	14:14
A.W.	2/16/2018	11:14	Morphine/2mg	6W	1	15 mins	Wasted
A.W.	2/16/2018	12:40	Morphine/2mg	6W	1	1hr 5min	Wasted
A.W.	2/16/2018	16:28	Morphine/2mg	6W	1	17 mins	Wasted
R.H.	2/18/2018	07:35	Dilaudid/.5mg	6W	1	23 mins	Wasted
B.L.	2/20/2018	07:43	Methadone/5mg	6W	1	26 mins	08:09

<sup>6</sup> According to New York State Health Rules and Regulations, Title 10 Part 80 80.46 F7, as it pertains to controlled substances and the dispensing/administration of controlled substances, once the medication is vended, the medication shall be administered immediately.

B.L.	2/20/2018	14:02	Methadone/5mg	6W	1	90 mins	15:32
M. H.	2/20/2018	14:03	Dilaudid/.5mg	6W	2	17 mins	14:20
B.L.	2/21/2018	07:48	Methadone/5mg	6W	1	21 mins	08:09
B.L.	2/21/2018	18:23	Oxycodone/5mg	6W	1	19 mins	17:59
I.K.	2/23/2018	12:12	Dilaudid/.5mg	6W	1	17 mins	12:29
F.M.	2/25/2018	06:52	Morphine/2mg	6W	1	1hr 30mins	08:22
I.K.	2/25/2018	08:06	Dilaudid/.5mg	6W	1	44 mins	08:50
A.W.	2/25/2018	08:07	Morphine/2mg	6W	1	26 mins	08:33
I.K.	2/25/2018	11:57	Dilaudid/.5mg	6W	1	1 hr 6mins	13:03
A.W.	2/25/2018	15:54	Morphine/2mg	6W	1	1 hr 21 mins	17:15
A.H.	2/26/2018	08:00	Oxycodone/5mg	6W	2	1 hr 10mins	09:10
K. S.	3/5/2018	09:10	Lorazepam/2mg	6W	1	40 mins	1.5mg wasted 09:10  .5mg 09:50
K.S.	3/5/2018	9:32	Oxycodone/5mg	6W	2	15 mins	2.5mg wasted 09:10  7.5mg 09:47
I.F.	3/5/2018	16:58	Lortab 10/325mg	6W	1	16 mins	17:15
P.C.	3/7/2018	08:14	Methadone/5mg	6W	1	35 mins	08:49
P.C.	3/7/2018	08:43	Oxycodone/5mg	6W	2	1 hr 35mins	10:18

S.G.	3/10/2018	10:26	Oxycodone/5mg	6W	1	30 mins	10:56
						43 mins	2.0mg wasted 11:30
S.G.	3/10/2018	11:30	Morphine/4mg	6W	1		2.0mg 12:13
						37 mins	1.0mg wasted 08:25
A.J.	3/15/2018	08:15	Lorazepam/2mg	6W	1		1.0mg 09:02
A.J.	3/15/2018	08:26	Methadone/5mg	6W	1	36 mins	09:02
A.J.	3/15/2018	14:44	Methadone/5mg	6W	1	24 mins	15:08
M.D.	3/17/2018	10:52	Oxycodone/5mg	6W	1	44 mins	Wasted
B.L.	3/18/2018	08:43	Methadone/5mg	6W	5	42 mins	09:25
S.N.	3/22/2018	08:24	Methadone/5mg	6W	1	32 mins	08:56
G.S.	3/23/2018	07:29	Lorazepam/2mg	6W	1	12 mins	07:41
G.S.	3/23/2018	13:12	Klonopin/.5mg	6W	1	16 mins	13:28
G.S.	3/23/2019	13:14	Morphine/.5mg	6W	1	14 mins	13:28
C.N.	3/27/2018	07:34	Dilaudid/.5mg	6W	1	1 hr 6mins	08:40
C.N.	3/27/2018	12:40	Lorazepam/2mg	6W	1	47 mins	13:27
C.N.	3/27/2018	12:42	Morphine Oral 10m	6W	1	45 mins	13:27
C.N.	3/27/2018	17:01	Oxycodone/5mg	6W	4	15 mins	17:01
C.N.	3/27/2018	18:31	Fentanyl 100mcg	6W	1	11 mins	18:42

C.N.	4/1/2018	07:02	Dilaudid/.5mg	6W	2	19 mins	07:21
C.N.	4/1/2018	16:43	Dilaudid/.5mg	6W	3	24 mins	17:07
C.N.	4/2/2018	08:11	Dilaudid/.5mg	6W	2	25 mins	08:36
M.B.	4/6/2018	08:56	Oxycodone/ER 10m	6W	1	41 mins	09:37
M.B.	4/6/2018	08:56	Oxycodone/5mg	6W	2	41 mins	09:37
C.B.	4/6/2018	12:38	Oxycodone/5mg	6W	1	19 mins	12:57
M.B.	4/6/2018	18:12	Oxycodone/5mg	6W	2	24 mins	18:36
H.W.	4/9/2018	07:56	Oxycodone/5mg	6W	1	1hr 36mins	Wasted
A.R.	4/10/2018	09:18	Lortab 10/325mg	6W	1	26 mins	Wasted
S.H.	4/15/2018	09:28	Dilaudid/.5mg	6W	1	58 mins	10:26
D.D.	4/18/2018	09:28	Morphine/2mg	6W	1	16 mins	09:44
D.D.	4/18/2018	09:35	Klonopin/0.5mg	6W	1	15 mins	09:50
L.M.	4/18/2018	16:47	Methadone/5 mg	6W	1	25 mins	17:12
D.D.	4/22/2018	08:24	Klonopin/0.5mg	6W	1	34 mins	08:58
D.D.	4/22/2018	08:25	Morphine/2mg	6W	1	1hr 41mins	10:06
A.H.	4/22/2018	13:30	Morphine/2mg	6W	1	29 mins	13:59
A.H.	4/23/2018	14:27	Morphine/2mg	6W	1	14 mins	14:41
P.M.	4/23/2018	14:38	Klonopin/0.5mg	6W	1	28 mins	15:06
D.D.	4/27/2018	08:42	Morphine/2mg	6W	1	1hr 13mins	09:55

P.M.	4/27/2018	09:54	Morphine ER 15mg	6W	1	58 mins	10:52
D.D.	4/27/2018	16:50	Morphine/2mg	6W	1	43 mins	17:33
M.H.	4/29/2018	10:33	Morphine/2mg	6W	1	16 mins	10:49
D.J.	5/10/2018	14:24	Morphine ER 30mg	6W	1	33 mins	14:57
D.J.	5/11/2018	17:57	Morphine Oral 10m	6W	1	28 mins	18:25
D.J.	5/12/2018	16:32	Morphine ER 30mg	6W	1	54 mins	17:26
D.J.	5/12/2018	16:32	Morphine Oral 10m	6W	1	16 mins	16:48
T.M.	5/20/2018	07:48	Morphine ER 15mg	6W	1	44 mins	08:32
J.B.	5/20/2018	07:49	Fentanyl 25MCG	6W	1	49 mins	08:38
M.L.	5/20/2018	13:31	Methadone/10mg	6W	1	41 mins	14:10
A.M.	5/25/2018	08:41	Oxycodone/5mg	6W	1	1hr 52mins	10:33
R.R.	5/25/2018	11:35	Codeine Sulfate 30	6W	1	1hr 22 mins	12:57
K.L.	5/27/2018	13:02	Oxycodone/5mg	6W	2	22 mins	13:24
K.L.	5/27/2018	13:02	Methadone/5mg	6W	1	22 mins	13:24
T.E.	5/27/2018	15:48	Tramadol/50mg	6W	1	15 mins	16:03
D.E.	5/31/2018	13:17	Oxycodone/5mg	6W	1	56 mins	Wasted
						16 mins	2.5mg Waste 08:54
I.P.	6/1/2018	08:54	Methadone/5mg	6W	1		1.5mg 09:10
E.M.	6/2/2018	10:36	Alprazolam	6W	1	24 mins	.1mg waste



							10:36 .15mg 11:00
T.E.	6/5/2018	08:24	Oxycodone/5mg	6W	1	21 mins	08:45
T.E.	6/5/2018	18:41	Oxycodone/5mg	6W	1	24 mins	19:05
J.C.	6/13/2018	17:44	Dilaudid/.5mg	6W	1	19 mins	18:03
C.J.	6/18/2018	08:45	Methadone/5mg	6W	1	17 mins	09:02

31. Based on my training and experience, and information learned during the course of the investigation, medical professionals do not always administer medication immediately according to a medical facility's policy. **MULVEY's** actions, however, in their totality and the consistent and significant timing gap in most of the above-referenced occurrences are not typical.

**B. Tampered with and Stole Vials of Medication from Pyxis Machine**

32. It is believed that **MULVEY** used her position as a nurse to tamper with and steal vials of medication while employed at Roswell Park in violation of Title 18, United States Code, Section 1365(a). Specifically, in or about February 2018 through in or about June 2018, **MULVEY** tampered with vials of, and stole, Dilaudid from Roswell Park. **MULVEY** tampered with and stole medications from Roswell Park by taking vials of medication from the Pyxis machine.

33. In or about June 2018 to in or about July 2018, at Roswell Park there was a span of waterborne infections called *Sphingomonas paucimobilis* bacteremia. *Sphingomonas paucimobilis* bacteremia is waterborne bacteria. Typically, Roswell Park has only 1-2 patients infected with *Sphingomonas paucimobilis* bacteremia per year.

**CHART E**

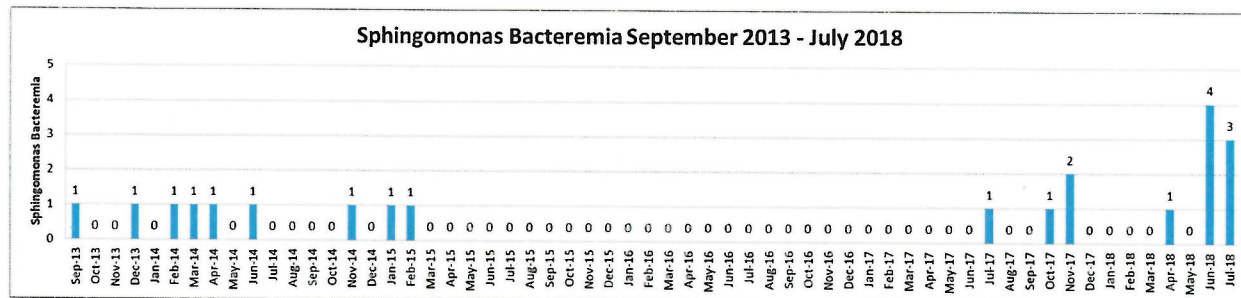


Chart E is Roswell Park's history of *Sphingomonas paucimobilis* bacteremia from September 2013 to July 2018. Note: Even though July shows 3 patients were infected, Roswell Park said only two of the patients became ill due to the tampering of the Hydromorphone.

34. By June 20, 2018, three patients with bacteremia were identified within days by blood culture. Roswell Park departments of Infection Control, Infectious Disease and the Pharmacy began an investigation of common Intra Venous drugs, product recalls, PCA pumps, etc. Compounded drugs<sup>7</sup>, which included the 30 ml Dilaudid, were immediately suspected. All other common drugs were investigated. On Thursday, June 21, 2018, the fourth patient was identified with the bacteremia. Roswell Park's investigation focused on the alleged tampering of compounded Dilaudid syringes, which it believed were manipulated and replaced with water. It is believed that this bacteria was in a liquid, which was used to

<sup>7</sup> Generally, compounded drugs generally are made by a hospital or retail pharmacy, or sometimes by a medical practitioner, for a specific patient's needs.

replace the volume in the 30 ml syringes of Dilaudid (contaminated with the bacteria). The Roswell Park investigation concluded that 30 ml syringes of Dilaudid infected the patients in June 2018.

35. On June, 27 2018, **MULVEY** was observed exiting a Medication Room on 6 North carrying a backpack. **MULVEY** was on vacation that week. **MULVEY's** normal work unit was 6 West, not 6 North. The Nursing Supervisor deemed this conduct suspicious and contacted the Pharmacy about the activity. At that point, the Pyxis machine and drawer **MULVEY** accessed contained seven Dilaudid 30 ml PCA syringes (Sample Group 01 and 02 please), which were immediately removed from the Pyxis and sequestered.

36. In response, Roswell Park conducted a study on the sequestered syringes. On or about June 28, 2018, Sample Group 01 (seven syringes) were tested. By July 3, 2018, four of seven grew the waterborne bacteria, *Sphingomonas paucimobilis*; four of seven had approximately 80% of the product removed and replaced (approximately 20% of the product remained). But the testing of Sample Group 1 did not adequately link to a specific syringe, all seven syringes were tested again on July 6, 2018, in Sample Group 02. Unfortunately, Sample Group 02 was cross contaminated.

37. After investigating further, Roswell Park sequestered four additional Dilaudid 30 ml PCA syringes (Sample Group 03). On July 11, 2018, Sample Group 03 was tested. Chart F will summarize the findings of all 4 syringes to include the syringe ID, the syringe

date of release into Pyxis, syringe chemical analysis result<sup>8</sup>, syringe micro result<sup>9</sup>, location where the syringe was removed from the Pyxis, the date it was removed from the Pyxis machine and if there was a black dot on the syringe.

CHART F

Syringe ID	Syringe Date of Release into Pyxis	Syringe Chemical Analysis Result	Syringe Micro Result	Location Removed from Pyxis	Date Removed	Black Dot	Mulvey Last Access of Machine
8	6/18/18	0.32% Dilaudid syringe of in	Positive	6 East	7/3/18	Yes	6/26/18 19:03
9	6/28/18	95.10% Dilaudid syringe of in	Negative	6 North	7/3/18	No	6/27/18 18:19
10	4/18/18	55.70% Dilaudid syringe of in	Positive	6 East	5/11/18	Yes	5/10/18 09:40
11	4/10/18	12.60% Dilaudid syringe of in	Positive	7 West	5/6/18	Yes	5/5/18 18:54

As detailed above, in at least the three of instances in Sample Group 03, it is believed that **MULVEY** removed the drug and replaced it with a clear unknown fluid, replaced the cap, marked the label with a single black dot,<sup>10</sup> and placed the syringe back in the Pyxis drawer.

<sup>8</sup> This category shows the percentage of Dilaudid or "chemical" that was in the syringe.

<sup>9</sup> This category shows if there was bacterial growth from the culture.

<sup>10</sup> It is believed that **MULVEY** marked the tampered syringes with a black dot so she would know which syringe she had accessed already.

38. In the July 13, 2018 Roswell Park met with **MULVEY**. At the meeting, **MULVEY** was accused of narcotic diversion and accused of potentially manipulating syringes, which caused multiple patients to develop a bacterial infection. Specifically, **MULVEY** was accused of taking narcotics from syringes and replacing the medication with water. **MULVEY** denied taking the narcotics from syringes and replacing the medication with water. Six patients became ill between the time period of June 11, 2018 and June 16, 2018.

39. In a newspaper article, dated September 27, 2018, titled, "*Roswell patients infected after worker swaps narcotics for water in syringes*," the article stated that "Several patients at Roswell Park Cancer Comprehensive Cancer Center developed infections after a staff member replaced a narcotic drug from the syringes with water and they were injected with the syringes," quoting Dr. Boris Kuvshinoff, chief medical officer at Roswell Park. See Maki Becker, Roswell patients infected after worker swaps narcotics for water in syringes, Buffalo News (published on September 27, 2018).<sup>11</sup>

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<sup>11</sup> The story is also mentioned in an online news article from WKBW, dated September 27, 2018, titled, Roswell patients develop infection from "potentially manipulated syringes." Former employee accused of "narcotic diversion." The article noted that federal, state and local authorities were investigating a "narcotic diversion" at Roswell Park and that a now-former employee was taking narcotics from syringes and replacing the medication with water. The article continued to say that the hospital believed that some patients developed infections from these "potentially manipulated syringes," but were treated with antibiotics. The article can be found online at <https://www.wkbw.com/news/i-team/roswell-patients-develop-infection-from-potentially-manipulated-syringes>.

40. On September 27, 2018, -- the same day the newspaper article about the investigation into **MULVEY**'s possible narcotics diversion was published -- there was a jail call between **MULVEY**'s brother ("TM") and **MULVEY**'s mother ("CM"), talking about the newspaper article.<sup>12</sup> During the call, CM told TM that "her charges were put in the paper" and "it hit the news today." I believe that CM was talking about **MULVEY** when CM stated "her charges" to TM. CM and TM continued talking about **MULVEY** stating that **MULVEY** volunteered to go to rehab and that she surrendered her license. CM said "she is very blessed in the fact, you know, that she didn't live that lifestyle very long .... Had she not been caught .... didn't come to attention that early on, she would probably still be doing it." TM said "Her arm is a stark reminder. She could lose everything." On the same call, **MULVEY** got on the phone with TM. TM asked about the article and if her name was in the article. **MULVEY** told him that she was not officially charged and that her name was not in the paper. TM told **MULVEY** that if her name was not in the paper she was not officially charged. **MULVEY** said she was "embarrassed" and that her name will eventually be in the paper. **MULVEY** said she did not read the article in the paper and that she did not want to read it. TM asked **MULVEY** if this had all happened over four months ago and **MULVEY** said yes. **MULVEY** also said she wanted to get her nursing license back.

41. The tampering of the hydromorphone (Dilaudid) affected interstate commerce. I have been advised by Assistant United States Attorney Joshua A. Violanti that the phrase

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<sup>12</sup> TM is currently detained by New York State in a jail facility as such TM's calls are subject to recording and monitored.

“affected interstate commerce” under Title 18, United States Code, Section 1365(a) means to be involved in or to affect in some way trade or business between one state and another state. See United States v. Gonsalves, 435 F.3d 64, 71 (1st Cir. 2006) (“In such a case, it is clearly enough if the vaccines imported from out of state had ‘not yet’ reached the consumer.”); United States v. Moyer, 985 F.Supp. 924, 925-26 (D. Minn. 1997), affirmed by, United States v. Moyer, 182 F.3d 1018 (8th Cir. 1999) (nurse who stole morphine thereby depleted supply, affected interstate commerce by causing more morphine to be ordered), *cert. denied*, 530 U.S. 1203 (2000); United States v. Nukida, 8 F.3d 665, 670 (9<sup>th</sup> Cir. 1993); see also Hays v. United States, 397 F.3d 564, 568 (7th Cir. 2005) (“We find that a violation of § 1365(a) occurs whether the tampering takes place before, during, or after the product moves in interstate commerce.”). **MULVEY**’s tampering depleted the supply of Dilaudid at Roswell Park and impacted the product before it reached the customer (patients at Roswell).

42. Based on information learned during the course of the investigation, in or about February 2018 to in or about June 2018, Roswell Park utilized both McKesson Drug Buffalo, and QuVa Pharma Inc. for their hydromorphone (Dilaudid) supply. McKesson Drug Buffalo is a pharmaceutical distributor located at 2700 North America Ave, West Seneca, New York, and QuVa Pharma is a pharmaceutical distributor located at 1075 West Park One Drive, Suite 100, Sugar Land, TX for the Hydromorphone 30 ml PCA. The hydromorphone (Dilaudid) that Roswell purchased through McKesson, for the purpose of compounding, was manufactured by Akorn Pharmaceuticals (Akorn, Inc.), located at Lake Forest, IL 60045.

43. Based on my training and experience, and information learned during the course of the investigation, it is believed that **MULVEY** not only diverted the medication but also switched the hydromorphone medication with contaminated water. The diversion in this case was easily obtainable because Roswell Park's pharmacy compounded the Dilaudid in house and had no tamper proof system for these Dilaudid 30 ml PCA syringes. The above-mentioned study on the four syringes (Sample Group 03) showed that the three syringes with black dots on them had only 0.32% to 55.70% of Dilaudid left in the syringe and the same three had bacterial growth. It is believed that **MULVEY** marked the tampered syringes with a black dot so she would know which syringes she took Dilaudid from already. Further investigation revealed that **MULVEY** has been in and out of both outpatient and inpatient rehabilitation since her July 13, 2018 meeting and resignation with Roswell Park.

44. Based on my experience and training, as well as the evidence outlined above, there is probable cause to believe that in or about February 2018 through in or about June 2018, **MULVEY** with reckless disregard for and extreme indifference to the risk that another person would be placed in danger of bodily injury, did tamper with consumer products, that affected interstate commerce, and the containers for such products by removing, mixing and diluting the contents of vials containing Hydromorphone (Dilaudid) maintained at Roswell Park, knowing the vials were intended to be dispensed to patients.

**C. The Health Insurance Portability and Accountability Act**



45. The enactment of the Health Insurance Portability and Accountability Act (“hereinafter HIPAA”) in 1996 represented a comprehensive overhaul of our nation’s approach to health care delivery and payment. HIPAA included a comprehensive scheme to protect the confidentiality of all individually identifiable health information. It is a crime under HIPAA to obtain or disclose individually identifiable health information. See 42 U.S.C. § 1320d-6. When accessing the Pyxis machine, employees are able to view the patient name, patient ID, patient location, patient height and weight, medical record information, and what medications are associated with that name and the prescription orders for that patient, all in which, constitute individually identifiable health information.<sup>13</sup>

46. In or about April 2018 through in or about June 2018, **MULVEY** accessed 132 patients in the Pyxis machine that were not under **MULVEY**’s care. All of these patients were on a different floor and/or wing at Roswell Park, from the one on which **MULVEY** worked (6 West). All of these transactions were identified as “CANCELLED REMOVED”, which indicates that the Pyxis machine drawer for the selected medication was accessed but the transactions were cancelled without medication being administered to a patient. Chart E below includes patient initials, the date and time the Pyxis machine was accessed by

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<sup>13</sup> “Individually identifiable health information” means any information, including demographic information collected from an individual, that-- (A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and-- (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. 42 U.S.C. § 1320d(6).

MULVEY, which drug was accessed and the floor/wing MULVEY accessed the Pyxis machine:

**Chart G**

Patient	Date	Time	Drug/Str.	Unit
A.H.	4/9/2018	10:15	Dilaudid/30ml PCA	6N
A.H.	4/9/2018	10:34	Dilaudid/30ml PCA	6N
A.H.	4/10/2018	11:23	Dilaudid/30ml PCA	6E
A.H.	4/10/2018	15:09	Dilaudid/30ml PCA	6N
A.H.	4/13/2018	13:22	Dilaudid/30ml PCA	6N
A.H.	4/13/2018	13:34	Dilaudid/30ml PCA	6N
A.H.	4/13/2018	13:39	Dilaudid/30ml PCA	6N
A.H.	4/15/2018	08:16	Dilaudid/30ml PCA	6N
A.H.	4/15/2018	08:24	Dilaudid/30ml PCA	6N
C.R.	4/18/2018	14:38	Dilaudid/30ml PCA	6E
C.R.	4/18/2018	14:42	Dilaudid/30ml PCA	6E
C.R.	4/18/2018	15:54	Dilaudid/30ml PCA	6N
J.I.	4/22/2018	07:36	Dilaudid/30ml PCA	6E
J.T.	4/22/2018	09:43	Dilaudid/30ml PCA	7E
J.T.	4/22/2018	11:55	Dilaudid/30ml PCA	5W
J.T.	4/22/2018	12:05	Dilaudid/30ml PCA	5W

D.M.	4/27/2018	11:44	Dilaudid/30ml PCA	6E
D.M.	4/27/2018	11:50	Dilaudid/30ml PCA	5E
R.D.	4/30/2018	13:31	Dilaudid/30ml PCA	7E
R.D.	4/30/2018	13:43	Dilaudid/30ml PCA	7E
R.D.	4/30/2018	13:51	Dilaudid/30ml PCA	7E
R.D.	4/30/2018	13:56	Dilaudid/30ml PCA	6E
R.D.	4/30/2018	14:03	Dilaudid/30ml PCA	6E
J.H.	5/4/2018	07:16	Dilaudid/30ml PCA	6E
J.H.	5/4/2018	07:19	Dilaudid/30ml PCA	5N
J.H.	5/4/2018	07:23	Dilaudid/30ml PCA	5N
J.H.	5/4/2018	07:26	Dilaudid/30ml PCA	5N
J.H.	5/4/2018	07:34	Dilaudid/30ml PCA	5N
J.H.	5/4/2018	18:17	Dilaudid/30ml PCA	7E
J.H.	5/5/2018	09:46	Dilaudid/30ml PCA	6E
J.H.	5/5/2018	09:54	Dilaudid/30ml PCA	6E
J.H.	5/5/2018	18:47	Dilaudid/30ml PCA	7W
J.H.	5/5/2018	18:54	Dilaudid/30ml PCA	7W
J.H.	5/7/2018	10:31	Dilaudid/30ml PCA	6E
J.H.	5/7/2018	10:40	Dilaudid/30ml PCA	6E

J.H.	5/7/2018	16:12	Dilaudid/30ml PCA	7W
J.H.	5/7/2018	16:30	Dilaudid/30ml PCA	7W
A.H.	5/10/2018	08:28	Dilaudid/30ml PCA	6N
J.J.	5/10/2018	09:28	Dilaudid/30ml PCA	6E
J.J.	5/10/2018	09:40	Dilaudid/30ml PCA	6E
A.H.	5/10/2018	13:45	Dilaudid/30ml PCA	6N
A.H.	5/10/2018	13:54	Dilaudid/30ml PCA	6N
A.H.	5/10/2018	13:59	Dilaudid/30ml PCA	6N
A.H.	5/10/2018	18:37	Dilaudid/30ml PCA	6N
A.H.	5/11/2018	08:51	Dilaudid/30ml PCA	6N
A.H.	5/11/2018	08:57	Dilaudid/30ml PCA	6N
A.H.	5/11/2018	09:04	Dilaudid/30ml PCA	6N
A.H.	5/11/2018	09:10	Dilaudid/30ml PCA	6N
A.H.	5/11/2018	19:02	Dilaudid/30ml PCA	6N
A.H.	5/11/2018	19:12	Dilaudid/30ml PCA	6N
A.H.	5/12/2018	08:27	Dilaudid/30ml PCA	6N
A.H.	5/12/2018	08:46	Dilaudid/30ml PCA	6N
A.H.	5/12/2018	09:05	Dilaudid/30ml PCA	6N
A.H.	5/12/2018	09:11	Dilaudid/30ml PCA	6N

A.H.	5/12/2018	17:37	Dilaudid/30ml PCA	6N
A.H.	5/12/2018	17:44	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	07:24	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	07:29	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	14:38	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	14:45	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	18:23	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	18:29	Dilaudid/30ml PCA	6N
A.H.	5/17/2018	18:35	Dilaudid/30ml PCA	6N
A.H.	5/20/2018	08:51	Dilaudid/30ml PCA	6N
A.H.	5/20/2018	08:55	Dilaudid/30ml PCA	6N
B.C.	5/20/2018	10:33	Dilaudid/30ml PCA	6E
B.C.	5/20/2018	10:38	Dilaudid/30ml PCA	6E
A.H.	5/20/2018	13:13	Dilaudid/30ml PCA	6N
A.H.	5/20/2018	13:21	Dilaudid/30ml PCA	6N
A.H.	5/20/2018	17:54	Dilaudid/30ml PCA	6N
B.C.	5/20/2018	17:57	Dilaudid/30ml PCA	7E
B.C.	5/20/2018	17:58	Dilaudid/30ml PCA	7E
B.C.	5/20/2018	17:58	Dilaudid/30ml PCA	7E

B.C.	5/20/2018	18:02	Dilaudid/30ml PCA	7E
A.H.	5/21/2018	09:29	Dilaudid/30ml PCA	6N
A.H.	5/21/2018	09:32	Dilaudid/30ml PCA	6N
A.H.	5/21/2018	14:01	Dilaudid/30ml PCA	6N
A.H.	5/21/2018	14:07	Dilaudid/30ml PCA	6N
M.K.	5/25/2018	07:13	Dilaudid/30ml PCA	6E
M.K.	5/25/2018	07:19	Dilaudid/30ml PCA	6E
M.S.	5/25/2018	07:20	Dilaudid/30ml PCA	6N
M.S.	5/25/2018	07:26	Dilaudid/30ml PCA	6N
K.L.	5/25/2018	09:43	Dilaudid/30ml PCA	5E
K.L.	5/25/2018	16:28	Dilaudid/30ml PCA	7E
C.S.	5/27/2018	10:14	Dilaudid/30ml PCA	6E
C.S.	5/27/2018	10:16	Dilaudid/30ml PCA	6N
M.S.	5/27/2018	10:24	Dilaudid/30ml PCA	6N
C.S.	5/27/2018	10:29	Dilaudid/30ml PCA	6E
C.S.	5/27/2018	17:49	Dilaudid/30ml PCA	7E
C.B.	5/29/2018	10:49	Dilaudid/30ml PCA	6E
L.M.	5/31/2018	09:32	Dilaudid/30ml PCA	6N
L.M.	5/31/2018	09:35	Dilaudid/30ml PCA	5N

L.M.	5/31/2018	09:37	Dilaudid/30ml PCA	5N
L.M.	5/31/2018	13:44	Dilaudid/30ml PCA	6E
L.M.	5/31/2018	13:54	Dilaudid/30ml PCA	6E
L.M.	6/1/2018	10:24	Dilaudid/30ml PCA	6E
K.H.	6/1/2018	10:29	Dilaudid/30ml PCA	7E
L.M.	6/1/2018	10:37	Dilaudid/30ml PCA	7W
A.H.	6/1/2018	17:17	Dilaudid/30ml PCA	7E
A.H.	6/2/2018	13:21	Dilaudid/30ml PCA	7E
A.H.	6/2/2018	13:23	Dilaudid/30ml PCA	7E
P.J.	6/5/2018	07:34	Dilaudid/30ml PCA	6E
J.S.	6/5/2018	09:35	Dilaudid/30ml PCA	7E
P.J.	6/5/2018	13:35	Dilaudid/30ml PCA	5W
P.J.	6/5/2018	15:25	Dilaudid/30ml PCA	5W
G.P.	6/9/2018	07:05	Dilaudid/30ml PCA	6E
J.S.	6/9/2018	07:54	Dilaudid/30ml PCA	7E
G.P.	6/9/2018	14:25	Dilaudid/30ml PCA	6E
G.P.	6/9/2018	14:27	Dilaudid/30ml PCA	5N
G.P.	6/9/2018	14:29	Dilaudid/30ml PCA	7W
J.S.	6/10/2018	07:09	Dilaudid/30ml PCA	7E

A.T.	6/13/2018	17:06	Dilaudid/30ml PCA	6E
A.T.	6/14/2018	16:26	Dilaudid/30ml PCA	6E
A.T.	6/14/2018	16:27	Dilaudid/30ml PCA	7E
N.B.	6/15/2018	19:56	Dilaudid/30ml PCA	7W
N.B.	6/15/2018	20:09	Dilaudid/30ml PCA	7W
N.B.	6/15/2018	20:11	Dilaudid/30ml PCA	7W
D.M.	6/18/2018	10:10	Dilaudid/30ml PCA	6E
D.M.	6/18/2018	12:42	Dilaudid/30ml PCA	7E
D.M.	6/22/2018	07:03	Dilaudid/30ml PCA	7E
D.M.	6/22/2018	13:47	Dilaudid/30ml PCA	7E
D.M.	6/22/2018	15:45	Dilaudid/30ml PCA	6E
A.L.	6/22/2018	15:59	Dilaudid/30ml PCA	7W
R.B.	6/24/2018	10:25	Dilaudid/30ml PCA	7W
R.B.	6/24/2018	10:27	Dilaudid/30ml PCA	7E
R.B.	6/24/2018	10:29	Dilaudid/30ml PCA	ICU
A.H.	6/26/2018	18:42	Dilaudid/30ml PCA	6N
A.H.	6/26/2018	19:01	Dilaudid/30ml PCA	6N
A.H.	6/26/2018	19:03	Dilaudid/30ml PCA	6E
A.H.	6/26/2018	19:15	Dilaudid/30ml PCA	7W



A.H.	6/27/2018	18:11	Dilaudid/30ml PCA	6N
A.H.	6/27/2018	18:19	Dilaudid/30ml PCA	6N

47. Each entry in Chart G, is an occurrence where **MULVEY** accessed a patient's individually identifiable health information which was not authorized. Based on my training and experience, as well as information learned during the course of this investigation, **MULVEY** utilized the Pyxis machine in this manner to identify patients prescribed Dilaudid and to procure Dilaudid for herself because she was addicted to Dilaudid.

48. Based on the foregoing, your affiant respectfully submits that there is probable cause to believe that **KELSEY MULVEY**, knowingly and intentionally obtained quantities of Hydromorphone, a Schedule II controlled substance, by fraud, in violation of Title 21, United States Code, Section 843(a)(3).


### CONCLUSION

49. In addition, based on the foregoing, your affiant respectfully submits that there is probable cause to believe that **KELSEY MULVEY**, knowingly with reckless disregard for the risk that another person would be placed in danger of death or bodily injury, and under circumstances manifesting extreme indifference to such risk, did tamper with a consumer product that affected interstate commerce, and the containers for such products by removing, mixing and diluting the contents of vials containing Hydromorphone maintained at Roswell

Park, knowing the vials were intended to be dispensed to patients, in violation of Title 18, United States Code, Section 1365(a).


50. In addition, based on the foregoing, your affiant respectfully submits that there is probable cause to believe that **KELSEY MULVEY**, did knowingly and in violation of Part C of the Health Insurance Portability and Accountability Act of 1996, obtained individually identifiable health information relating to individuals with the intent to use such information for commercial advantage or personal gain, in violation of Title 42, United States Code, Sections 1320d-6 (a)(2), (a)(3), and (b)(3); all in violation of Title 18, United States Code, Section 2.

51. I further request that this affidavit and criminal complaint remained sealed until **MULVEY** is arrested or the Court orders it to be unsealed, whichever occurs first.

  
CHARLES A. ARGENTO  
Special Agent  
U.S. Food and Drug Administration

Subscribed and sworn to before

me this 31<sup>st</sup> day of May 2019.

  
HONORABLE MICHAEL J. ROEMER  
United States Magistrate Judge