AO 93 (Rev. 12/09) Search and Seizure Warrant (USAO CDCA Rev. 01/2013)

UNITED STATES DISTRICT COURT

for the

Central District of California

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* Sunny Hills Pharmacy 1907 Sunny Crest Drive Fullerton, California 92835	)	Case No. 8:17-MJ-00392

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Central District of California *(identify the person or describe the property to be searched and give its location)*:

See Attachment A-1

The person or property to be searched, described above, is believed to conceal *(identify the person or describe the property to be seized)*:

See Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property. Such affidavit or testimony are incorporated herein by reference and attached hereto.

YOU ARE COMMANDED to execute this warrant on or before 14 days from the date of its issuance *(not to exceed 14 days)*

☑ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge on duty at the time of the return through a filing with the Clerk's Office.
(name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)* ☐ for _____ days *(not to exceed 30).*

☐ until, the facts justifying, the later specific date of _____.

Date and time issued: 12/04/2017 at 5:15 PM

DOUGLAS F. McCORMICK

Judge's signature

City and state: Santa Ana, California

Douglas F. McCormick, U.S. Magistrate Judge

Printed name and title

AUSA: Ann Luotto Wolf

AO 93 (Rev. 12/09) Search and Seizure Warrant (Page 2)

Return

Case No.: 8:17-MJ-00392	*Date and time warrant executed:*	*Copy of warrant and inventory left with:*

Inventory made in the presence of :

Inventory of the property taken and name of any person(s) seized:

[Please provide a description that would be sufficient to demonstrate that the items seized fall within the items authorized to be seized pursuant to the warrant (e.g., type of documents, as opposed to "miscellaneous documents") as well as the approximate volume of any documents seized (e.g., number of boxes). If reference is made to an attached description of property, specify the number of pages to the attachment and any case number appearing thereon.]

Certification (by officer present during the execution of the warrant)

I declare under penalty of perjury that I am an officer who executed this warrant and that this inventory is correct and was returned along with the original warrant to the designated judge through a filing with the Clerk's Office.

Date: _____

_____
Executing officer's signature

_____
Printed name and title

AUSA: Ann Luotto Wolf

AFFIDAVIT

I, Stephanie Kolb, being duly sworn, declare and state as follows:

I. INTRODUCTION

1. I am presently employed as a Diversion Investigator ("DI") for the United States Drug Enforcement Administration ("DEA") and have been so employed since 2012. I am currently assigned to the Los Angeles Field Division, Tactical Diversion Squad ("TDS"), which is tasked solely with the investigation of the illegal trafficking of pharmaceutical controlled substances.

2. During the course of my employment, I received approximately 13 weeks of instruction in the investigation of controlled substance registrants (including doctors, physician assistants, and nurse practitioners) and major narcotics traffickers at the DEA Academy in Quantico, Virginia. I received additional training at Quantico in asset forfeiture and money laundering investigations.

3. I have specialized training and experience in narcotics trafficking, conspiracy, and distribution investigations, specifically including pharmaceutical controlled substances investigations. I have participated in all aspects of drug investigations, including the use of confidential sources and undercover officers, electronic surveillance, the execution of search and arrest warrants, investigative interviews, and the analysis of seized records, physical evidence, and taped conversations. Over the course of my employment as a DI, I have been the case agent or lead

investigator on several federal investigations that have specifically involved the illegal trafficking of pharmaceutical controlled substances by medical doctors, physician assistants, and nurse practitioners, and I have participated in multiple other investigations that involved the illegal diversion of pharmaceutical controlled substances. I have spoken on numerous occasions with pharmacists, physicians, DIs, Medical Board investigators, patients, and other witnesses having extensive knowledge of pharmaceuticals regarding the methods and practices of individuals trafficking in or diverting pharmaceutical controlled substances.

4. Through my investigations, my training and experience, and my conversations with other law enforcement personnel, I have become familiar with the tactics and methods used by traffickers to smuggle and safeguard pharmaceutical controlled substances, to distribute and divert pharmaceutical controlled substances, and to collect and launder the proceeds from the sale of controlled substances. Further, I am aware of the tactics and methods employed by pharmaceutical trafficking organizations and individuals to thwart investigation of their illegal activities.

5. I have participated in the federal prosecution of physicians, physician assistants, and pharmacists. During the course of trial, I have testified both to specific knowledge of the case and my knowledge obtained through training and experience.

6. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrants and does not purport to set forth all of my knowledge of or investigation into this matter. Unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only.

II. PURPOSE OF AFFIDAVIT

7. This affidavit is made in support of an application for warrants to search the following locations (collectively, the "**SUBJECT PREMISES**") and to seize evidence, fruits, and instrumentalities of violations of 21 U.S.C. §§ 841, 846 (distribution of controlled substances, possession of controlled substances with intent to distribute, and related conspiracy) and 18 U.S.C. §§ 1347 and 1349 (health care fraud and related conspiracy):

a. SUBJECT PREMISES-1: Pacific Healthcare, Inc., doing business as ("dba") Sunny Hills Pharmacy ("SUNNY HILLS"), located at 1907 Sunny Crest Drive, Fullerton, California 92835. SUBJECT PREMISES-1 is the business location for SUNNY HILLS, as further described in this affidavit and in Attachment A-1; and

b. SUBJECT PREMISES-2: a residence located at 406 Westchester Place, Fullerton, 92835. SUBJECT PRESMISES-2 is the residence of Hyun (Eugene) Ro ("RO"), Pharmacist in Charge

("PIC") and Owner of SUNNY HILLS, as further described in this affidavit and in Attachment A-2.

8. The **SUBJECT PREMISES** are more specifically described in Attachments A-1 and A-2 to the search warrant application, which are incorporated as though fully set forth herein. The items to be seized from the **SUBJECT PREMISES** are set forth in Attachment B to the search warrant application, which is also incorporated as though fully set forth herein.

III. SUMMARY OF INVESTIGATION

9. DEA first became aware of SUNNY HILLS in 2014 during a DEA investigation of two physicians, Dr. Forest TENNANT and Dr. Lloyd COSTELLO. TENNANT and COSTELLO are the top two prescribers of controlled substances filled by SUNNY HILLS. Currently, this investigation targets a drug trafficking organization ("DTO") whose members include SUNNY HILLS pharmacy and several physicians issuing prescriptions filled by SUNNY HILLS, including in particular TENNANT and COSTELLO. Based on the evidence obtained to date, DEA investigators believe that SUNNY HILLS, TENNANT, COSTELLO, and various medical practitioners are diverting for profit controlled substances, including the powerful narcotic oxycodone, from legitimate medical purposes. The evidence includes: analyses of the prescribing, ordering, and billing patterns of SUNNY HILLS and/or TENNANT and/or COSTELLO (the "SUNNY HILLS/TENNANT/COSTELLO data"); two medical experts' opinions regarding red flags of diversion and fraud reflected in the SUNNY HILLS/TENNANT/COSTELLO data; witness interviews; surveillance

conducted by investigators; summaries of financial records obtained during the investigation; and records of a prior criminal conviction and related medical board adjudication against TENNANT for submitting fraudulent billings to Medi-Cal.

10. Based on the evidence developed in this investigation, I believe:

a. The DTO has distributed dangerous and addictive prescription drugs, including oxycodone, through the issuance of invalid prescriptions by TENNANT, COSTELLO, and other practitioners; and

b. SUNNY HILLS has submitted millions of dollars in fraudulent Medicare claims for filling the invalid prescriptions issued by TENNANT, COSTELLO, and other practitioners.

IV. BACKGROUND INFORMATION

A. Targets of Investigation

1. SUNNY HILLS and RO

11. My investigation of SUNNY HILLS's DEA federal controlled substance registration and California State Board of Pharmacy ("CSBOP") state licensing records disclosed the following:

a. On December 31, 2010, CSBOP issued SUNNY HILLS a retail pharmacy license, listing RO as PIC. RO is a licensed registered pharmacist and owner of SUNNY HILLS. On March 2, 2012, SUNNY HILLS replaced RO with Patricia HOPPE as the PIC. However, RO remains owner of SUNNY HILLS and still operates as the PIC when HOPPE is not present. SUNNY HILLS is a retail pharmacy with a current pharmacy license in the State of

California (license number CA 50436) and a listed place of business of SUBJECT PREMISES-1 (1907 Sunnycrest Drive, Fullerton, CA 92835).

b. SUNNY HILLS has a current DEA registration number (FS2398976). Registration number FS2398976 was renewed on January 11, 2017, and expires on February 29, 2020. SUNNY HILL's DEA records also show SUBJECT PREMISES-1 as its registered address. The DEA registration lists RO as the applicant and primary contact.

12. On October 30, 2017, I queried Thompson Reuters CLEAR, a public records database, and saw SUBJECT PREMISES-2 listed as RO's residence. RO maintains the property deed and property taxes for SUBJECT PREMISES-2.

13. During the investigation, DEA Special Agents ("SAs") and Task Force Officers ("TFOs") have conducted surveillance at SUBJECT PREMISES-1 and SUBJECT PREMISES-2. During surveillance on November 8, 2017, DEA SA Davis Mertus and TFO Sarah Ingalls saw RO travel between SUBJECT PREMISES-2 and SUBJECT PREMISES-1. SA Mertus witnessed RO arrive at, and open the back door to, the pharmacy. RO carried a black bag as he entered the pharmacy. SA Mertus entered the pharmacy posing as a customer and observed RO working in the back of the pharmacy.

14. Based on my participation in and knowledge of recent agent and video surveillance at SUBJECT PREMISES-1, including on November 8, 2017, I know SUNNY HILLS continues to operate at SUBJECT PREMISES-1, with individuals entering and exiting SUNNY HILLS in a manner consistent with regular customer activity.

15. On November 20, 2015, CSBOP issued an investigative report on SUNNY HILLS. The accusations in the report are for unlawful manufacturing and sales of misbranded drugs. SUNNY HILLS was compounding using a drug, domperidone, which the Food and Drug Administration ("FDA") has not approved for human use for safety reasons, and failed to notify patients. Despite a warning on this drug given by CSBOP in April 2015, SUNNY HILLS continued to dispense the drug.

B. Controlled Substances Relevant to Investigation

16. Based on my training and experience, I know the following about the drugs relevant to this investigation:

a. Oxycodone (brand names OxyContin, Percocet, Roxicodone) is a generic name for a narcotic analgesic classified under federal law as a Schedule II narcotic controlled substance. Oxycodone, when legally prescribed for a legitimate medical purpose, is typically used for the relief of moderate to severe pain. Oxycodone is sometimes referred to as "synthetic heroin" or "hillbilly heroin," and the effects, addiction, and chemical composition of oxycodone are extremely similar to heroin. An oxycodone prescription is generally issued for a modest number of pills taken over a short period because of the potential for addiction. OxyContin is a time-released formulation available in several strengths between 10mg and 80mg per tablet, designed for absorption into the system over the course of 10 to 12 hours. OxyContin was approved for use in 1996 and, by 2001, OxyContin was the largest grossing opiate pain reliever in the United States. In 2010, due to

public pressure, the manufacturer reformulated OxyContin to make it more difficult to snort, smoke, or otherwise abuse, and changed the markings on the pill from "OC" to "OP" to differentiate the newer tamper-resistant version. Roxicodone is an immediate-release formulation available in 5mg, 15mg, and 30mg tablets. Because of the immediate-release component, the potential for overdose and death with Roxicodone is exponentially higher than OxyContin, even though individual tablets generally contain less of the narcotic substance. Oxycodone in either formulation is extremely addictive and is a commonly abused controlled substance that is diverted from legitimate medical channels. Oxycodone typically has a street value of $10 to $15 per 30mg tablet in the greater Los Angeles area.

b. Hydrocodone (brand names Vicodin, Norco, and Lortab) is a generic name for a narcotic analgesic classified under federal law as a Schedule II narcotic drug controlled substance; hydrocodone was elevated from a Schedule III to Schedule II drug in October 2014. Hydrocodone, when legally prescribed for a legitimate medical purpose, is typically used for the relief of mild to moderate pain. Accordingly, the prescription is generally for a modest number of pills taken over a short period. Hydrocodone is formulated in combinations of 5 to 10mg of hydrocodone and 325 to 750mg of acetaminophen. Hydrocodone can be addictive and is a commonly abused controlled substance that is diverted from legitimate medical channels.

Hydrocodone typically has a street value of $3 per 10mg tablet in the greater Los Angeles area.

c. Fentanyl (brand names Duragesic, Actiq, Subsys) is a generic name for a semi-synthetic opioid narcotic analgesic classified under federal law as a Schedule II narcotic drug controlled substance. Fentanyl is a commonly abused controlled substance that is diverted from legitimate medical channels. Fentanyl has been approved for use for anesthesia and analgesia, most often in the operating room and intensive care unit. Fentanyl is the most potent opioid pain reliever available for use in medical treatment and is used to help relieve severe ongoing pain (such as due to cancer). Fentanyl has an extremely high potential for abuse, addiction, and the development of tolerance.

d. Individuals on the black market – both drug addicts and drug traffickers – often seek to abuse or sell narcotics such as oxycodone and hydrocodone in combination with other drugs such as benzodiazepines and muscle relaxants. Examples of benzodiazepines include alprazolam (brand name Xanax), diazepam (brand name Valium), and clonazepam (brand name Klonopin), all Schedule IV drugs intended primarily for use in treatment of conditions such as anxiety or insomnia. The primary muscle relaxant sought on the black market is carisoprodol (brand name Soma), also a Schedule IV drug primarily used for treatment of physiological conditions such as muscle spasms. While these drugs are addictive and dangerous even taken alone, the combination of a narcotic with a

benzodiazepine and/or a muscle relaxant exponentially magnifies the danger of the overall cocktail. On the black market, this drug cocktail of a narcotic, benzodiazepine, and muscle relaxant is commonly referred to as the "trinity" and is among the most sought-after prescription by addicts and dealers. Law enforcement recognizes as a major red flag of illicit drug diversion doctors prescribing and/or pharmacists dispensing such drug cocktails.

C. Law and Policy Regarding Prescription Medication

17. Based on my training and experience, I know that the distribution of controlled substances must meet certain federal rules and regulations, including the following:

a. 21 U.S.C. § 812 establishes schedules for controlled substances that present a potential for abuse and the likelihood that abuse of the drug could lead to physical or psychological dependence. Such controlled substances are listed in Schedule I through Schedule V depending on the level of potential for abuse, the current medical use, and the level of possible physical dependence. Controlled substance pharmaceuticals are listed in Schedules II through V because they are drugs for which there is a substantial potential for abuse and addiction. There are other drugs available only by prescription but not classified as controlled substances. Title 21 of the Code of Federal Regulations, Part 1308, provides further listings of scheduled drugs.

b. Pursuant to 21 U.S.C. § 822, controlled substances may only be prescribed, dispensed, or distributed by

persons registered with the Attorney General of the United States to do so (with some exceptions, such as delivery persons). The Attorney General has delegated to the DEA authority to register such persons.

c. Under 21 U.S.C. § 823(f), DEA-registered medical practitioners (including pharmacies, *see* 21 U.S.C. § 802(21)) must be specifically authorized to handle controlled substances in any jurisdiction in which they engage in medical practice.

d. 21 C.F.R. § 1306.04 sets forth the requirements for a valid prescription. It provides that for a "prescription for a controlled substance to be effective [it] must be issued for a *legitimate medical purpose* by an individual practitioner *acting in the usual course of his professional practice*. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription." (Emphases added.)

e. 21 C.F.R. § 1306.05 sets forth the manner of issuance of prescriptions. It states that "[a]ll prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address, and registration number of the practitioner."

f. 21 C.F.R. § 1306.12 governs the issuance of multiple prescriptions and states: "An individual practitioner may issue multiple prescriptions authorizing the patient to

receive a total of up to a 90-day supply of a Schedule II controlled substance provided the following conditions are met:

i. Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice;

ii. The individual practitioner provides written instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription;

iii. The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

iv. The issuance of multiple prescriptions as described in this section is permissible under the applicable state laws; and

v. The individual practitioner complies fully with all other applicable requirements as well as any additional requirements under state law."

g. California Health and Safety Code § 11172 states: "No person shall antedate or postdate a prescription."

h. 21 U.S.C. § 841(a)(1) makes it an offense for any person to knowingly and intentionally distribute or dispense a controlled substance except as authorized by law. Distribution of a scheduled controlled substance in violation of 21 U.S.C. § 841(a)(1) (often referred to as "diversion") by a medical doctor occurs when a medical doctor knowingly and intentionally

prescribes a controlled substance, knowing the drugs were controlled, for a purpose other than a legitimate medical purpose and outside of "the usual course of professional practice." *See United States v. Moore*, 423 U.S. 122, 124 (1975) ("We . . . hold that registered physicians can be prosecuted under 21 U.S.C. § 841 when their activities fall outside the usual course of professional practice."); *see also United States v. Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006) ("[T]o convict a practitioner under § 841(a), the government must prove (1) that the practitioner distributed controlled substances, (2) that the distribution of those controlled substances was outside the usual course of professional practice and without a legitimate medical purpose, and (3) that the practitioner acted with intent to distribute the drugs and with intent to distribute them outside the course of professional practice.").

18. The Medical Board of California formally adopted a policy statement entitled "Prescribing Controlled Substances for Pain." The Medical Board's guidelines for prescribing a controlled substance for pain state that the practitioner must obtain a medical history and conduct a physical examination. Such history and exam include an assessment of the pain and physical and psychological function; substance abuse history; prior pain treatment; assessment of underlying or coexisting diseases and conditions; and documentation of the presence of a recorded indication for the use of a controlled substance.

19. California Business and Professions Code, Section 2242(a), states that there must be a logical connection between

the medical diagnosis and the controlled substance prescribed: "Prescribing, dispensing, or furnishing dangerous drugs . . . without an appropriate prior examination and a medical indication, constitutes unprofessional conduct." A practitioner must make "an honest effort to prescribe for a patient's condition in accordance with the standard of medical practice generally recognized and accepted in the country." *United States v. Hayes*, 794 F.2d 1348, 1351 (9th Cir. 2006).

V. PROBABLE CAUSE

A. Background of the Investigation

20. In February 2014, the Maryland State Police ("MSP") informed DEA that TENNANT was writing large quantities of controlled substance prescriptions to a patient located in Maryland. According to MSP investigators, the patient visited with TENNANT only periodically and had not seen TENNANT since August 2013. Nevertheless, the patient was receiving monthly refills of schedule II narcotics (500 methadone 10mg, 740 oxycodone 30mg, 740 oxycodone 15mg, and 520 oxycodone 20mg), which SUNNY HILLS filled. The patient told MSP investigators that TENNANT advised the patient to fill his prescriptions at SUNNY HILLS.

a. I reviewed SUNNY HILLS's CURES data from January 1, 2014 to November 1, 2017,[1] which confirmed that SUNNY HILLS filled 1,307 prescriptions issued by TENNANT, most recently on

[1] The California Department of Justice - Bureau of Narcotic Enforcement Controlled Substance Utilization Review and Evaluation System ("CURES") tracks California medical practitioner's prescribing history.

October 20, 2017, totaling 260,398 dosage units of controlled drugs. I saw reflected in the CURES data multiple "red flags" of drug diversion, such as a large number of patients receiving drug cocktails of narcotics and benzodiazepines.

21. My review of SUNNY HILLS's CURES data further showed that SUNNY HILLS filled 1,229 prescriptions issued by COSTELLO, most recently on October 17, 2017, totaling 212,055 dosage units of controlled substances. I saw reflected in the CURES data multiple "red flags" of drug diversion, such as a large number of patients receiving drug cocktails of narcotics and benzodiazepines.

B. SUNNY HILLS's CURES and ARCOS Data

22. From my review of SUNNY HILLS's CURES data for the period January 1, 2014 to November 1, 2017, I learned the following:

a. SUNNY HILLS filled approximately 4,095 oxycodone prescriptions, dispensing approximately 580,000 dosage units. Over 257,762 dosage units were for 30mg oxycodone, the maximum strength available for short-acting oxycodone and most sought-after form of oxycodone currently on the black market.[2]

b. SUNNY HILLS dispensed over 428,000 dosage units of hydrocodone, more than 60 percent of which were for the maximum strength 10mg hydrocodone.

[2] Although long-acting oxycodone, such as OxyContin, comes in strengths as high as 80mg, following the 2010 change in formulation that made the pills more difficult to crush and abuse, addicts' preference for 80mg OxyContin waned.

c. SUNNY HILLS filled 1,516 schedule II controlled substance prescriptions, totaling approximately 140,691 dosage units, to out-of-state patients, including 34,806 dosage units of 30mg oxycodone and 56,554 dosage units of hydromorphone (56,306 for maximum strength 8mg Dilaudid).[3] I know based on my training and experience that patients traveling long distances to obtain their controlled substance prescriptions is another "red flag" of drug abuse and addiction. The out-of-state patients also received multiple opiate and benzodiazepine drug cocktails.

d. In addition to the out-of-state patients, based on my training and experience I identified the following "red flags" of patient drug misuse and abuse:

- patients receiving the "trinity" (opiate, benzodiazepine, and muscle relaxant);
- patients residing at the same address; and
- family members receiving the same or similar drugs.

e. TENNANT and COSTELLO were the top two prescribers at SUNNY HILLS. TENNANT accounted for 82,838 dosage units of oxycodone prescriptions dispensed from SUNNY HILLS; COSTELLO accounted for 120,338 dosage units of oxydocone prescriptions dispensed from SUNNY HILLS. TENNANT accounted for 87,158 dosage units of Dilaudid dispensed from SUNNY HILLS, and COSTELLO accounted for 22,070 dosage units of hydrocodone dispensed from SUNNY HILLS.

[3] Hydromorphone (brand name Dilaudid) is a schedule II opioid pain reliever and a commonly abused and diverted prescription drug.

f. SUNNY HILLS filled at least 5,124 prescriptions for "private pay" compensation, that is, for cash or credit card payment.

23. I also reviewed Automated Reports and Consolidated Orders System ("ARCOS") data for SUNNY HILL's wholesale transaction orders from January 1, 2014 through June 30, 2017.[4] From the data, I observed:

- the pharmacy reported 1,653,366 total dosage units of drugs; and
- 58% of the drugs ordered, or 954,980 dosage units, were for maximum strength schedule II narcotics, including 48% of the oxycodone ordered (or 300,200 dosage units) were 30mg oxycodone, 73% of the hydrocodone ordered (or 309,360 dosage units) were 10mg hydrocodone, and 93% (or 127,700 dosage units) were 10mg methadone.

24. Antony Ngondara, CSBOP Supervising Inspector, reviewed the CURES and ARCOS data. His review identified TENNANT, COSTELLO, and one other physician as prescribers with pain management practices. He stated that "the prescribing patterns of each doctor are varied enough to show that it is not totally indiscriminant." Ngondara noted an issue with the dispensing by SUNNY HILLS due to the large number of out-of-area patients, including patients of TENNANT and COSTELLO. Ngondara expressed

[4] ARCOS is an automated drug reporting system that monitors the flow of certain controlled substances from their point of manufacture through commercial distribution channels to point of sale or distribution at the dispensing/retail level. The drugs tracked by ARCOS include all Schedule II drugs and all Schedule III opiates.

concern over how SUNNY HILLS could confirm a relationship between the prescriber and his patients.

C. Expert Review of SUNNY HILLS's CURES and ARCOS Data

25. I reviewed a report dated July 24, 2017, prepared by pharmacist Carmen Catizone ("Dr. Catizone"). Dr. Catizone is the Executive Director of the National Association of Boards of Pharmacy ("NABP"), a position that he has held for approximately 30 years. Dr. Catizone graduated from the University of Illinois at Chicago, College of Pharmacy, with a Bachelor of Science degree in pharmacy and a Master of Science degree in pharmacy administration. Dr. Catizone is a registered pharmacist and has an Honorary Doctor of Pharmacy from the Oklahoma State Board of Pharmacy. In addition to his leadership role at NABP, throughout his career Dr. Catizone has practiced as a registered pharmacist in community, hospital, and institutional settings. Since September 2006, Dr. Catizone has served as an expert witness on pharmacy practice and prescription drug diversion in at least 16 cases nationwide.

26. Dr. Catizone reviewed SUNNY HILLS's ARCOS and CURES data for January 1, 2014 through April 2016. In his report, Dr. Catizone concluded: "Based upon my education, training, and experience in the practice and regulation of pharmacy, it is my opinion that [SUNNY HILLS] willingly and knowingly engaged in illegal activities outside the scope of pharmacy practice."

27. Dr. Catizone's opinion was based on, *inter alia*, the following findings:

a. SUNNY HILLS purchased "an excessively high number of controlled substances, particularly Schedule II controlled substances, when compared to the usual course of practice for retail pharmacies."

b. SUNNY HILLS dispensed dangerous combinations of drugs to patients, including combinations of controlled substances that "serve no legitimate medical purpose and are well documented in the medical literature as life threatening and further identified as drugs of abuse. . . . In fact, there are specific warnings in the medical literature and known to pharmacists, about the use of these drugs individually or concomitantly." For example, Dr. Catizone noted the combinations of methadone and opioids, and/or benzodiazepines, as well as opioids and fentanyl, all of which are particularly dangerous when dispensed in combination.

c. SUNNY HILLS filled prescriptions "to individuals with addresses geographically distanced from the pharmacy and from different states." In multiple instances, the patient's address was 10-20 miles from the pharmacy and in a city or region that listed multiple pharmacies, sometimes twenty or more, in closer proximity to the patient's address.

d. "Excessively large quantities of controlled substances . . . specifically oxycodone, hydrocodone, benzodiazepines, and testosterone" were dispensed by SUNNY HILLS.

28. As part of the investigation into TENNANT, Dr. Timothy Munzing reviewed CURES data from June 22, 2016 through September

19, 2017, reflecting 3,775 total prescriptions written to 183 unique patients. Dr. Munzing received his medical degree from UCLA School of Medicine in 1982. He has served as a medical expert consultant for the Medical Board of California since 2004 and as a medical expert consultant for the DEA since 2014. During that time, Dr. Munzing has formally reviewed and provided opinions in more than 100 cases, of which more than 70% have dealt in some capacity with prescriptions of opioid and other controlled medications. Dr. Munzing has taught and/or lectured staff physicians, students, and medical residents on guidelines and appropriate practice in opioid prescribing. Dr. Munzing has nearly 30 years of clinical experience as a family physician with the Southern California Permanente Medical Group (Kaiser Permanente) in Santa Ana, California, during which time he served as a physician leader responsible for reviewing the quality of care given to patients and as a family medicine residency program Director teaching medicine to thousands of residents and medical students. Dr. Munzing also holds an appointment as a clinical professor at University of California Irvine School of medicine. Dr. Munzing is board certified in family medicine and is a member of the American Pain Society and the American Academy of Integrative Pain Medicine. In its summer 2017 issue, the peer-reviewed Permanente Journal published an article authored by Dr. Munzing titled, "Physician Guide to Appropriate Opioid Prescribing in Noncancer Pain."

a. Dr. Munzing produced a written report dated October 13, 2017, documenting his findings. In conducting his

review, Dr. Munzing selected 20 patients for "more detailed" review in his written report "based on potential significant areas of concern as far as the prescribing patterns identified" from his review of the CURES data. However, Dr. Munzing noted that "most of the patients on the CURES database have similar findings and could have been chosen," and that the 20 patients selected "represent only a small fraction of the total patients with very suspicious prescribing patterns." As to those 20 patients, Dr. Munzing concluded that "all have many extremely concerning findings" reflecting "prescribing patterns [that] are highly suspicious for medication abuse and/or diversion."

b. The "non-exhaustive" "areas of concern" cited by Dr. Munzing include the following:

i. Dr. Munzing observed that TENANNT was writing "extremely high numbers of pills/tablets" at a time. Dr. Munzing likewise noted the dangerous cocktails that the patients were receiving, including "multiple opioids/controlled substances concurrently. This increases the risk of overdose and/or death." Notably, of the 20 patients selected by Dr. Munzing, eight were receiving the "holy trinity" cocktail (a narcotic, benzodiazepine, and muscle relaxant). Dr. Munzing also observed that "many patients are receiving injectable opioids, hormones, etc.," which is "highly irregular."

ii. Dr. Munzing addressed the morphine equivalency dosing ("MED") for the narcotic prescriptions

written by TENNANT.[5] According to Dr. Munzing's report, the risk of overdose death increases once a cocktail reaches an MED of 50-100 mg/day. By comparison, Dr. Munzing concluded that "many or most patients" reflected in TENNANT's CURES data "had levels far over those thresholds, including all 20 patients selected. Some had levels at 1,000 mg/day or even as high as over 3,000 mg/day – extremely high and at high risk of overdose and death."

iii. Dr. Munzing noted that "many patients are traveling long distances to see Dr. Tennant, some as far away as Maryland and Louisiana. Others are coming from between 100 to 500 miles."

c. Ultimately, Dr. Munzing stated that "it is not possible to give a final conclusive opinion" regarding the legality of the prescriptions in the CURES data, absent review of further evidence. Accordingly, investigators will likely obtain an updated opinion from Dr. Munzing based on the evidence developed from the execution of the requested search warrants, such as patient files. However, Dr. Munzing concluded "based on the findings, and my extensive experience reviewing such cases, I find to a very high level of certainty that after review of the medical records, once obtained if they exist, that Dr. Tennant failed to meet the requirements in prescribing these dangerous medications. These prescribing patterns are highly

[5] MED is a means of calculating the potency of narcotic(s) prescribed to a patient. For example, if a patient is prescribed a cocktail of multiple narcotics (*e.g.*, oxycodone, hydrocodone, and fentanyl), the potency of each drug is converted to the approximate equivalent milligram strength of morphine, thus allowing practitioners and reviewers to aggregate and compare the total dosage of narcotics prescribed.

suspicious for medication abuse and/or diversion. If the patients are actually using all of the medications prescribed, they are at very high risk for addiction, overdose, and death."

d. SUNNY HILLS dispensed to 19 TENNANT patients, with a total of 1307 prescriptions. Examples of the prescriptions identified by Dr. Munzing include, patient S.R. who received prescriptions for 600 alprazolam 2mg, 88 OxyContin 80mg, 450 oxycodone 30mg, and 1,584 hydromorphone 8mg. All these drugs are the highest dosage unit available and for large quantities. In addition, the patient lives in Colona, Illinois. Another patient, T.Y. is receiving prescriptions from SUNNY HILLS prescribed by TENNANT for 120 alprazolam 2mg, 300 hydromorphone 8mg, 280 oxycodone 30mg, 15 fentanyl patches 100mcg/1hr, and 50ml hydromorphone 10mg/1ml. These prescriptions are for the highest dosage units available, combinations of multiple opioids, and contain injectable opioids. In addition, while this patient lives in California, T.Y. resides in San Marcos, California, which is 77 miles from SUNNY HILLS, and 94 miles from TENNANT.

D. Review of SUNNY HILLS's Medicare Claims

29. I reviewed a report prepared by the Medicare Prescription Drug Integrity Contractor ("MEDIC")[6] regarding Medicare Part D claims submitted by SUNNY HILLS from January 1, 2013 through April 2017 and learned the following:

[6] Services provided by MEDIC include analyzing Medicare billing data to identify fraud and abuse in Medicare prescription claims.

a. In total, there were approximately 119,185 prescription drug claims submitted by SUNNY HILLS for approximately 1,369 Medicare beneficiaries for a total of approximately $7,331,560 in paid claims.

b. 3,849 claims were for opioid agonists (the classification of drugs that includes narcotics relevant to this investigation, such as oxycodone, fentanyl, and hydrocodone). The top four schedule II drugs were 10mg hydrocodone, 5mg hydrocodone, 10mg methadone, and 30mg oxycodone. Opioid agonists were in the top six subclasses of drugs dispensed.

i. Two of the top three beneficiaries for schedule II drug claims resided outside of California. I reviewed the pharmacy board databases in those states and determined that SUNNY HILLS does not have a license in the states where they are shipping controlled substance prescriptions. Medicare paid a total of approximately $61,000 for 357 out-of-state claims, the majority of which were for controlled substances. Based on my training and experience, it is not consistent with usual pharmacy retail practice to ship controlled substances to other states without appropriate licensure (*e.g.* a mail order pharmacy).

c. TENNANT was the prescribing physician for 775 prescription drug claims totaling approximately $117,016 in payments. TENNANT was the top prescriber of schedule II drugs, with 464 claims totaling $96,443 in payments for five beneficiaries. Two of the beneficiaries resided in California, while the other three resided in, respectively, Alabama, Hawaii,

and Mississippi. Overall, TENNANT prescriptions accounted for 531 claims submitted by SUNNY HILLS for beneficiaries residing outside of California, the majority of which were for controlled drugs, for a total of $62,747 in payments.

E. Pharmacist Review of COSTELLO and TENNANT Medicare Prescribing

30. On August 4, 2016, Dr. Jodi Sullivan, Pharm.D., C.Ph., a MEDIC senior pharmacist, conducted a review of COSTELLO's prescribing between January 2015 and July 2016.[7] The top two subclasses of drug claim records by COSTELLO were opioid agonists and hydrocodone combinations. Benzodiazepines were listed as the seventh highest drug class. Hydrocodone and oxycodone were listed as the top two drugs overall.

31. Dr. Sullivan noted five beneficiaries whose date of death occurred within 30 days of receiving controlled substance prescriptions from COSTELLO. Four of the five beneficiaries were receiving an MED above 120mg. One patient analyzed by Dr. Sullivan had an MED of 3,060mg daily. Dr. Sullivan recommended that these patients be investigated further to determine if COSTELLO's prescribing contributed to their deaths.

[7] I reviewed Dr. Sullivan's CV and learned the following. In 1995, Dr. Sullivan received a Doctorate of Pharmacy with high honors from the University of Florida, College of Pharmacy. Since 2014, she has served as an expert for Medicare-related prescription drug investigations, both internally and externally for law enforcement, and her duties include conducting audits of prescription drug claims for fraud, waste, and abuse. Prior to that time, Dr. Sullivan served in various capacities, including as director of pharmacy for a hospital, clinical pharmacist for CVS Caremark, and clinical services manager/clinical account manager for a prescription drug benefit management company.

32. Dr. Sullivan concluded that there were multiple indicators of "inappropriate prescribing." She stated that while some of the findings may be explainable on their own, the "combination of multiple findings in this review is consistent with fraudulent activity."

33. On October 27, 2016, Dr. Sullivan produced a separate review regarding Medicare Part D claims for prescriptions issued by TENNANT. Dr. Sullivan based her report on her review of 5,837 prescription drug claims for 97 unique beneficiaries from January 2014 to October 2016. From her review, Dr. Sullivan concluded, among other things: "In summary, the overall impression of Dr. Tennant's prescribing is high opioid analgesic prescribing with questionable practices and combinations that are likely to be harmful to patients."

34. Dr. Sullivan's findings included, among other things, the following:

a. Approximately 44% of all prescription drug claims (2,577) were for beneficiaries with an address outside the State of California; in total, TENNANT prescribed to 45 patients residing in 25 different states. Similarly, 1,716 claims were submitted by a pharmacy outside of California, in 16 different states. Dr. Sullivan noted that, although the prescription drug event ("PDE") data reflected where beneficiaries lived at the time the data was run, "the level of prescribing to out of state beneficiaries appears such that it would not be explained by beneficiaries moving to other states." Dr. Sullivan stated that "a telemedicine registration" may be obtained for prescribers

"if they demonstrate a legitimate need for the special registration and are registered in the state in which the patient is located when receiving the telemedicine treatment," but that "[f]rom review of state license sites where Dr. Tennant is associated with beneficiaries, there are no current state licenses for Dr. Tennant outside of California."

b. Transmucosal immediate release fentanyl ("TIRF") drugs have a maximum of four doses (*i.e.*, tablets, sprays, etc.) per day. Dr. Sullivan noted that 144 of the PDEs were for TIRF drugs, 108 of which were for doses exceeding four per day; the average dose quantity per day was 8.8, more than double the maximum. Moreover, the TIRF claims included 98 claims for Subsys (63 at maximum strength) and 45 for lozenges (all at maximum or second-highest strength). Dr. Sullivan reviewed Medicare records of seven patients for whom the TIRF claims were submitted, finding that three of them had no diagnosis of cancer on record with Medicare (although Dr. Sullivan noted that Medicare diagnosis records are not necessarily complete).

c. Dr. Sullivan commented on a "trend" in TENNANT'S "prescribing combinations of drugs that are consistent with 'pill mill' prescribing practices and are considered high risk prescribing," such as:

i. Dr. Sullivan focused in particular on combinations of narcotics, benzodiazepines, stimulants, and/or carisoprodol, noting "patients were commonly given two or three categories of drugs together," including cocktails of opioids with carisoprodol or benzodiazepines (*i.e.*, the "trinity").

d. Dr. Sullivan also noted the large volume of benzodiazepines prescribed by TENNANT, including her observation of a "trend . . . of prescribing for the highest strength of a given benzodiazepine."

VI. ADDITIONAL PROBABLE CAUSE FOR ITEMS TO BE SEIZED

35. Based on my training, education, and experience, as well as discussions with other law enforcement officers, I know the following regarding the common *modus operandi* of the offenses under investigation in this case, namely, controlled drug diversion and health care fraud committed by medical practitioners (including doctors and pharmacists):

a. Such practitioners often keep controlled substances and drugs, records of drug transactions, criminal proceeds, ledgers of compromised patients and beneficiaries (*i.e.*, those to whom invalid prescriptions are issued), and other records within their businesses and other secure locations (*e.g.*, residences, safe deposit boxes, and storage areas) and vehicles and conceal such items from law enforcement authorities. The drugs/prescriptions may be distributed or sold, but documentary records and ledgers remain. Such records often include books, account ledgers, payments, and/or notes and other evidence of financial transactions relating to obtaining, transferring, and spending substantial sums of money, which result from engaging in drug trafficking activities.

b. Such practitioners also often retain personal and business notes, letters, and correspondence relating to their narcotics/prescription orders at their residences, businesses,

safe deposit boxes, in storage areas, and electronically via digital devices such as cellular telephones and computers.

c. Such practitioners often retain telephone and address books and appointment books identifying additional individuals, including patients and patient recruiters, involved in drug diversion or health care fraud.

d. Such practitioners commonly use, at their businesses and residences, personal communication devices and services to coordinate and otherwise further their criminal activities, such as communications with criminal associates or patients via cellular telephone calls or via cellular text messaging. For example, I am aware of recent cases wherein, on searching cellular telephones of practitioners, investigators obtained text messages discussing: issuance of prescriptions to patient recruiters; per-pill price of narcotics sold to drug traffickers; and coordination of meetings for the transfer of fraudulent prescriptions from a corrupt physician to a corrupt pharmacy to conceal illicit black market sales.

e. Such practitioners often maintain large amounts of United States currency in their residences and businesses, safe deposit boxes, and other storage areas in order to conceal their criminal activities and finance their ongoing illegal activities, as well as for their personal benefit and expenses.

f. Persons involved in drug trafficking, including medical professionals, often have firearms to protect against theft of their drugs and the proceeds of their drug trafficking. *See, e.g.*, *United States v. Gerlay*, 2010 WL 2867940, *2 (D.

Alaska 2010) ("Assuming the government can show cash was kept on the premises and that drug-addicted persons came to the clinic to obtain drugs, the evidence that Gerlay kept a gun and a baseball bat at the clinic is relevant to the proposition that he was operating a drug distribution business, not a medical clinic."). For example, during a federal search warrant for evidence of drug trafficking executed at a doctor's residence in November 2006, DEA agents found in various rooms throughout the residence numerous loaded handguns and a rifle. When interviewed about the firearms, the doctor told DEA agents he also carried a gun with him at all times, especially if he was carrying a lot of cash home from work.

g. Such practitioners and their employees routinely maintain patient files, which often include notes and/or copies of prescriptions, notes of communications between pharmacy and doctor to verify prescriptions, notes about supporting diagnoses, symptoms, and examinations, and other patient records such as copies of identification and insurance cards.

h. The records of such practitioners also often include the following: medical board or pharmacy board documents, contracts and agreements reflecting business or financial arrangements with other medical providers, bank statements, check registers, financial statements, drafts, billing records, files, journals and ledgers, patient lists, invoices, purchase orders, leases, or other rental documentation.

i. Relatedly, I know that California Business and Professions Code Section 4081 mandates that pharmacies keep records of the sale of dangerous drugs (including controlled substances) for at least three years, including records documenting the sale, acquisition, receipt, shipment, of such drugs. I also know that pharmacists and employees routinely keep these types of patient records and controlled substance records on computers or in other electronic forms, in addition to keeping hardcopy records.

j. In summary, I know that such corrupt practitioners often keep incriminating evidence not only in the pharmacy or medical practice location itself, but also in other secure locations such as their residence, where an inspector or auditor is less likely to seek or gain access. For example, I am aware of recent cases were search warrants executed at corrupt practitioners' residences resulted in the seizure of, *inter alia*: bulk currency, pay/owe ledgers, bulk controlled drugs, prescription bottles with third-party labels, and lists of, and medical records for, identity theft victims used to conceal black market diversion, as well as incriminating communications on personal digital devices.

VII. TRAINING AND EXPERIENCE ON DIGITAL DEVICES

36. Based on my training and experience, I know that medical practitioners routinely store information about patients on computers and other digital devices. Dispensing records at pharmacies are stored on computers. When I request records from pharmacies, they often look up the prescriptions on their

computer systems to determine the prescription numbers. Often pharmacies will scan copies of prescriptions into a computer system. In addition, pharmacies routinely submit their requests for schedule II controlled substances via computer. Pharmacies also report their filled controlled substance prescriptions to CURES via the internet.

37. I believe that the facts presented in this affidavit provide probable cause to believe that SUNNY HILLS's medical practice is permeated with illicit overprescribing. On this basis, the government does not intend to use a filter team to review any digital devices (including any patient files or portions thereof stored on such digital devices) in the execution of this search warrant. Based on my training and experience, I am also aware that DEA is entitled to demand an administrative review of the medical records, including patient files, of a DEA-registered practitioner such as SUNNY HILLS at any time. On this basis as well, the government does not believe that a filter team is needed for the review of digital devices.

38. As used herein, the term "digital device" includes any electronic system or device capable of storing or processing data in digital form, including central processing units; desktop, laptop, notebook, and tablet computers; personal digital assistants; wireless communication devices, such as telephone paging devices, beepers, mobile telephones, and smart phones; digital cameras; gaming consoles (including Sony PlayStations and Microsoft Xboxes); peripheral input/output

devices, such as keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related communications devices, such as modems, routers, cables, and connections; storage media, such as hard disk drives, floppy disks, memory cards, optical disks, and magnetic tapes used to store digital data (excluding analog tapes such as VHS); and security devices. Based on my knowledge, training, and experience, as well as information related to me by agents and others involved in the forensic examination of digital devices, I know that data in digital form can be stored on a variety of digital devices and that during the search of a premises it is not always possible to search digital devices for digital data for a number of reasons, including the following:

a. Searching digital devices can be a highly technical process that requires specific expertise and specialized equipment. There are so many types of digital devices and software programs in use today that it is impossible to bring to the search site all of the necessary technical manuals and specialized equipment necessary to conduct a thorough search. In addition, it may be necessary to consult with specially trained personnel who have specific expertise in the types of digital devices, operating systems, or software applications that are being searched.

b. Digital data is particularly vulnerable to inadvertent or intentional modification or destruction. Searching digital devices can require the use of precise, scientific procedures that are designed to maintain the

integrity of digital data and to recover "hidden," erased, compressed, encrypted, or password-protected data. As a result, a controlled environment, such as a law enforcement laboratory or similar facility, is essential to conducting a complete and accurate analysis of data stored on digital devices.

c. The volume of data stored on many digital devices will typically be so large that it will be highly impractical to search for data during the physical search of the premises. A single megabyte of storage space is the equivalent of 500 double-spaced pages of text. A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. Storage devices capable of storing 500 or more gigabytes are now commonplace. Consequently, just one device might contain the equivalent of 250 million pages of data, which, if printed out, would completely fill three 35' x 35' x 10' rooms to the ceiling. Further, a 500 gigabyte drive could contain as many as approximately 450 full run movies or 450,000 songs.

d. Electronic files or remnants of such files can be recovered months or even years after they have been downloaded onto a hard drive, deleted, or viewed via the Internet. Electronic files saved to a hard drive can be stored for years with little or no cost. Even when such files have been deleted, they can be recovered months or years later using readily-available forensics tools. Normally, when a person deletes a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the hard drive

until it is overwritten by new data. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space, *i.e.*, space on a hard drive that is not allocated to an active file or that is unused after a file has been allocated to a set block of storage space, for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a swap or recovery file. Similarly, files that have been viewed on the Internet are often automatically downloaded into a temporary directory or cache. The browser typically maintains a fixed amount of hard drive space devoted to these files, and the files are only overwritten as they are replaced with more recently downloaded or viewed content. Thus, the ability to retrieve residue of an electronic file from a hard drive depends less on when the file was downloaded or viewed than on a particular user's operating system, storage capacity, and computer habits. Recovery of residue of electronic files from a hard drive requires specialized tools and a controlled laboratory environment. Recovery also can require substantial time.

e. Although some of the records called for by this warrant might be found in the form of user-generated documents (such as word processing, picture, and movie files), digital devices can contain other forms of electronic evidence as well. In particular, records of how a digital device has been used, what it has been used for, who has used it, and who has been responsible for creating or maintaining records, documents, programs, applications and materials contained on the digital

devices are, as described further in the attachments, called for by this warrant. Those records will not always be found in digital data that is neatly segregable from the hard drive image as a whole. Digital data on the hard drive not currently associated with any file can provide evidence of a file that was once on the hard drive but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave digital data on the hard drive that show what tasks and processes on the computer were recently used. Web browsers, e-mail programs, and chat programs often store configuration data on the hard drive that can reveal information such as online nicknames and passwords. Operating systems can record additional data, such as the attachment of peripherals, the attachment of USB flash storage devices, and the times the computer was in use. Computer file systems can record data about the dates files were created and the sequence in which they were created. This data can be evidence of a crime, indicate the identity of the user of the digital device, or point toward the existence of evidence in other locations. Recovery of this data requires specialized tools and a controlled laboratory environment, and also can require substantial time.

f. Further, evidence of how a digital device has been used, what it has been used for, and who has used it, may be the absence of particular data on a digital device. For example, to rebut a claim that the owner of a digital device was

not responsible for a particular use because the device was being controlled remotely by malicious software, it may be necessary to show that malicious software that allows someone else to control the digital device remotely is not present on the digital device. Evidence of the absence of particular data on a digital device is not segregable from the digital device. Analysis of the digital device as a whole to demonstrate the absence of particular data requires specialized tools and a controlled laboratory environment, and can require substantial time.

g. Digital device users can attempt to conceal data within digital devices through a number of methods, including the use of innocuous or misleading filenames and extensions. For example, files with the extension ".jpg" often are image files; however, a user can easily change the extension to ".txt" to conceal the image and make it appear that the file contains text. Digital device users can also attempt to conceal data by using encryption, which means that a password or device, such as a "dongle" or "keycard," is necessary to decrypt the data into readable form. In addition, digital device users can conceal data within another seemingly unrelated and innocuous file in a process called "steganography." For example, by using steganography a digital device user can conceal text in an image file that cannot be viewed when the image file is opened. Digital devices may also contain "booby traps" that destroy or alter data if certain procedures are not scrupulously followed. A substantial amount of time is necessary to extract and sort

through data that is concealed, encrypted, or subject to booby traps, to determine whether it is evidence, contraband or instrumentalities of a crime.

39. As discussed herein, based on my training and experience I believe that digital devices will be found during the search. I know from my training and experience and my review of publicly available materials that Apple Inc., Motorola, HTC, and Samsung, among other companies, produce devices that can be unlocked by the user with a numerical or an alpha-numerical password, or, for some newer versions of the devices, with a fingerprint placed on a fingerprint sensor. Each company has a different name for its fingerprint sensor feature; for example, Apple's is called "Touch ID." Once a user has set up the fingerprint sensor feature in the security settings of the device, the user can unlock the device by placing a finger or thumb on the device's fingerprint sensor. If that sensor recognizes the fingerprint or thumbprint, the device unlocks. Most devices can be set up to recognize multiple prints, so that different prints, not necessarily from the same person, will unlock the device. In my training and experience, users of devices with a fingerprint sensor feature often enable that feature, because it unlocks the phone more quickly than the entry of a passcode or password but still offers a layer of security.

40. In some circumstances, fingerprint sensors will not work, and a passcode must be entered to unlock the device. For example, with Apple, Touch ID will not work if (1) more than 48

hours have passed since the device has been unlocked, (2) the device has been turned on or restarted, (3) the device has received a remote lock command, or (4) five attempts to match a fingerprint have been unsuccessful. Other brands have similar restrictions. I do not know the passcodes of the devices likely to be found at the **SUBJECT PREMISES**.

41. For these reasons, while executing the warrant, agents will likely need to use the fingerprints or thumbprints of any user(s) of any fingerprint sensor-enabled device(s) to attempt to gain access to that device while executing the search warrant. The warrant seeks the authority to compel the use of the fingerprint and/or thumbprint of every person who is located at the SUBJECT PREMISES during the execution of the search and who is reasonably believed by law enforcement to be a user of a fingerprint sensor-enabled device that is located at the SUBJECT PREMISES and falls within the scope of the warrant. The government may not be able to obtain the contents of the devices if those fingerprints are not used to access the devices by depressing them against the fingerprint sensor at the time of the search. Although I do not know which of the fingers are authorized to access on any given device, I know based on my training and experience that it is common for people to use one of their thumbs or index fingers for fingerprint sensors, and in any event all that would result from successive failed attempts is the requirement to use the authorized passcode or password.

42. Other than what has been described herein, to my knowledge, the United States has not attempted to obtain this data by other means.

VIII. CONCLUSION

43. Based on the foregoing, I respectfully submit there is probable cause to believe that evidence, fruits, and instrumentalities of violations of 21 U.S.C. §§ 841, 846 (distribution of controlled substances, possession of controlled substances with intent to distribute, and related conspiracy) and 18 U.S.C. §§ 1347 and 1349 (health care fraud and related conspiracy) will be located at the **SUBJECT PREMISES** and request that the Court issue the requested search warrants.

/s/

Stephanie A. Kolb
Diversion Investigator, DEA

Subscribed to and sworn before me on December 4, 2017.

DOUGLAS F. McCORMICK

HONORABLE DOUGLAS F. McCORMICK
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A-1

Description of SUBJECT PREMISES-1 to be searched

SUBJECT PREMISES-1 is described as follows:

SUBJECT PREMISES-1 is SUNNY HILLS Pharmacy's business located at 1907 Sunny Crest Drive, Fullerton, California 92835. SUBJECT PREMISES-1 is a storefront located on the west side of Sunny Crest Drive approximately three businesses northwest of West Valencia Mesa Drive. The building is grey stucco with a flat roof and glass doors. The entrance is on the east side of the business and has a sign showing "SUNNY HILLS PHARMACY" over the top.

ATTACHMENT B

I. ITEMS TO BE SEIZED

1. The items to be seized are evidence, contraband, fruits, or instrumentalities of violations of 21 U.S.C. §§ 841 and 846 (distribution and possession with intent to distribute a controlled substance, and related conspiracy) and 18 U.S.C. §§ 1347 and 1349 (health care fraud and related conspiracy) for the dates January 1, 2014 to the present, namely:

a. Schedule II controlled substances, including but not limited to oxycodone, hydromorphone, fentanyl, and hydrocodone, as well as benzodiazepines.

b. Documents that refer or relate to times when controlled substances, including but not limited to oxycodone, hydromorphone, fentanyl, hydrocodone, and benzodiazepines, were prescribed or dispensed, customer lists, appointment books, pharmacy information, correspondence, notations, logs, receipts, journals, books, and records.

c. Medical records, patient files, sign-in sheets, charts, billing information, payment records, and identification documents for or that refer to any of the following patients: (i) patients who have received any controlled drug from SUNNY HILLS and/or TENNANT and/or COSTELLO, or (ii) Medicare beneficiaries.

d. Documents, including but not limited to emails, check registers, cancelled checks, deposit items, financial instruments, facsimile transmissions, ledgers or correspondence

to/from any insurance provider that refer or relate to: the prescribing or dispensing of any controlled drug or to any person to whom a controlled substance was prescribed or dispensed.

e. United States currency, financial instruments, and precious metals in an aggregate value exceeding $1,000.

f. Records, documents, titles, mortgage paperwork, and deeds reflecting the purchase, rental, or lease of any real estate and vehicles, such as a car, truck, motorcycle, boat, plane, or RV.

g. Firearms and related items, such as ammunition, holsters, gun cases, and firearm cleaning kits.

h. Not more than twenty (20) indicia of occupancy, residency, rental, or ownership of the **SUBJECT PREMISES**, including but not limited to utility bills, telephone bills, loan payment receipts, rent receipts, trust deeds, lease or rental agreements, and escrow documents.

i. Keys to show ownership of storage facilities, businesses, locked containers, cabinets, safes, conveyances, and/or other residences.

j. Any digital device used to facilitate the above-listed violations and forensic copies thereof.

2. With respect to any digital devices used to facilitate the above-listed violations or containing evidence falling within the scope of the foregoing categories of items to be seized:

a. evidence of who used, owned, or controlled the device at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, user profiles, e-mail, e-mail contacts, chat and instant messaging logs, photographs, and correspondence;

b. evidence of the presence or absence of software that would allow others to control the device, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;

c. evidence of the attachment of other devices;

d. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the device;

e. evidence of the times the device was used;

f. passwords, encryption keys, and other access devices that may be necessary to access the device;

g. applications, utility programs, compilers, interpreters, or other software, as well as documentation and manuals, that may be necessary to access the device or to conduct a forensic examination of it;

h. records of or information about Internet Protocol addresses used by the device;

i. records of or information about the device's Internet activity, including firewall logs, caches, browser history and cookies, "bookmarked" or "favorite" web pages,

Instrumentality Protocol

search terms that the user entered into any Internet search engine, and records of user-typed web addresses.

3. As used herein, the terms "records," "documents," "programs," "applications," and "materials" include records, documents, programs, applications, and materials created, modified, or stored in any form, including in digital form on any digital device and any forensic copies thereof.

4. As used herein, the term "digital device" includes any electronic system or device capable of storing or processing data in digital form, including central processing units; desktop, laptop, notebook, and tablet computers; personal digital assistants; wireless communication devices, such as telephone paging devices, beepers, mobile telephones, and smart phones; digital cameras; peripheral input/output devices, such as keyboards, printers, scanners, plotters, monitors, and drives intended for removable media; related communications devices, such as modems, routers, cables, and connections; storage media, such as hard disk drives, floppy disks, memory cards, optical disks, and magnetic tapes used to store digital data (excluding analog tapes such as VHS); and security devices.

II. SEARCH PROCEDURE FOR DIGITAL DEVICES

5. In searching digital devices or forensic copies thereof, law enforcement personnel executing this search warrant will employ the following procedure:

a. Law enforcement personnel or other individuals assisting law enforcement personnel (the "search team") will, in their discretion, either search the digital device(s) on-site or

seize and transport the device(s) to an appropriate law enforcement laboratory or similar facility to be searched at that location. The search team shall complete the search as soon as is practicable but not to exceed 120 days from the date of execution of the warrant. The government will not search the digital device(s) beyond this 120-day period without first obtaining an extension of time order from the Court.

b. The search team will conduct the search only by using search protocols specifically chosen to identify only the specific items to be seized under this warrant.

i. The search team may subject all of the data contained in each digital device capable of containing any of the items to be seized to the search protocols to determine whether the device and any data thereon falls within the list of items to be seized. The search team may also search for and attempt to recover deleted, "hidden," or encrypted data to determine, pursuant to the search protocols, whether the data falls within the list of items to be seized.

ii. The search team may use tools to exclude normal operating system files and standard third-party software that do not need to be searched.

iii. The search team may use forensic examination and searching tools, such as "EnCase" and "FTK" (Forensic Tool Kit), which tools may use hashing and other sophisticated techniques.

c. If the search team, while searching a digital device, encounters immediately apparent contraband or other

evidence of a crime outside the scope of the items to be seized, the team shall immediately discontinue its search of that device pending further order of the Court and shall make and retain notes detailing how the contraband or other evidence of a crime was encountered, including how it was immediately apparent contraband or evidence of a crime.

d. If the search determines that a digital device does not contain any data falling within the list of items to be seized, the government will, as soon as is practicable, return the device and delete or destroy all forensic copies thereof.

e. If the search determines that a digital device does contain data falling within the list of items to be seized, the government may make and retain copies of such data, and may access such data at any time.

f. If the search determines that a digital device is (1) itself an item to be seized and/or (2) contains data falling within the list of items to be seized, the government may retain forensic copies of the digital device but may not access data falling outside the scope of the items to be seized (after the time for searching the device has expired) absent further court order.

g. The government may retain a digital device itself until further order of the Court or one year after the conclusion of the criminal investigation or case (whichever is latest), only if the device is determined to be an instrumentality of an offense under investigation or the government, within 14 days following the time period authorized

by the Court for completing the search, obtains an order from the Court authorizing retention of the device (or while an application for such an order is pending). Otherwise, the government must return the device.

h. After the completion of the search of the digital devices, the government shall not access digital data falling outside the scope of the items to be seized absent further order of the Court.

6. In order to search for data capable of being read or interpreted by a digital device, law enforcement personnel are authorized to seize the following items:

a. Any digital device capable of being used to commit, further or store evidence of the offense(s) listed above;

b. Any equipment used to facilitate the transmission, creation, display, encoding, or storage of digital data;

c. Any magnetic, electronic, or optical storage device capable of storing digital data;

d. Any documentation, operating logs, or reference manuals regarding the operation of the digital device or software used in the digital device;

e. Any applications, utility programs, compilers, interpreters, or other software used to facilitate direct or indirect communication with the digital device;

f. Any physical keys, encryption devices, dongles, or similar physical items that are necessary to gain access to the digital device or data stored on the digital device; and

g. Any passwords, password files, test keys, encryption codes, or other information necessary to access the digital device or data stored on the digital device.

7. During the execution of this search warrant, the law enforcement personnel are authorized to depress the fingerprints and/or thumbprints of ~~any person, who is located at the SUBJECT PREMISES during the execution of the search and who is reasonably believed by law enforcement to be a user of a fingerprint sensor-enabled device that is located at the SUBJECT PREMISES and falls within the scope of the warrant~~, onto the fingerprint sensor of the device (only when the device has such a sensor) in order to gain access to the contents of any such device.

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8. The special procedures relating to digital devices found in this warrant govern only the search of digital devices pursuant to the authority conferred by this warrant and do not apply to any search of digital devices pursuant to any other court order.

III. PROCEDURE FOR PATIENT REQUESTS FOR MEDICAL RECORDS

9. The following procedures will be followed in order to minimize disruption to the legitimate medical needs of patients: A patient whose medical information has been seized pursuant to this search warrant may request that a copy of that seized information be returned to the patient. These requests must be

in writing and shall be submitted to Diversion Investigator Stephanie A. Kolb, Drug Enforcement Administration, 1900 East First Street, Santa Ana, California 92701. Requests may also be faxed to (714) 647-4971 or emailed to Stephanie.a.kolb@usdoj.gov. The government must provide to the patient making the request a copy of any medical information it has regarding the patient within 48 hours (excluding weekends and holidays) of receiving the request.