

UNITED STATES DISTRICT COURT
for the
Northern District of Iowa

United States of America
v.
Samantha Jo Rogers

Case No.
18-MJ-358

Defendant(s)

CRIMINAL COMPLAINT

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

On or about the date(s) of About October 2017 - About May 2018 in the county of Cerro Gordo in the
Northern District of Iowa, the defendant(s) violated:

Table with 2 columns: Code Section and Offense Description. Rows include 21 U.S.C. §§ 843(a)(3), 846; 42 U.S.C. § 1320d-6(a)(2), (b)(2), (b)(3); 18 U.S.C. § 2(b). Offenses include Obtaining and Attempting to Obtain a Controlled Substance by Fraud, Deception, and Subterfuge; Criminal HIPAA Violations; and Aiding and Abetting.

This criminal complaint is based on these facts:

See attached Affidavit.

Continued on the attached sheet.

Teresa A. Dailey
Complainant's signature

Teresa A. Dailey, HHS/OIG Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 10/12/2018

MARK A. ROBERTS
Judge's signature

City and state: Cedar Rapids, Iowa

MARK A. ROBERTS, United States Magistrate Judge
Printed name and title

STATE OF IOWA)
) ss
COUNTY OF LINN)

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

Background of the Affiant

1. I, Teresa A. Dailey, (“Affiant”), being duly sworn, depose and state:
2. Affiant is a Special Agent with the U.S. Department of Health & Human Services, Office of Inspector General (HHS/OIG) in Kansas City, Missouri and has been so employed with HHS/OIG since October 2010. During that time, Affiant has been involved in many investigations involving frauds against the Department’s programs, most commonly health care fraud. Consequently, Affiant is generally familiar with how various types of health care providers conduct financial transactions, keep records, and provide health care items and services to the public. Affiant has a Bachelor of Arts in Economics from the University of Notre Dame, and a Masters in Public Health from the University of Kansas. Affiant is a graduate of the Federal Law Enforcement Training Center in Glynco, Georgia and has received extensive training in conducting healthcare fraud investigations.
3. Affiant is the case agent in a federal investigation of Samantha Jo ROGERS (hereafter ROGERS) for alleged violations of federal criminal laws. This affidavit is in support of an allegation that ROGERS (1) wrongfully private health information and (2) in order to obtain controlled substances from her employers’ patients by misrepresentation, fraud, deception, and subterfuge.
4. This affidavit contains information personally known to Affiant as an agent working on this investigation, Affiant’s previous investigative experience, reports and statements

made to Affiant by others working on this investigation, including local law enforcement and other personnel from the Mason City Police Department (MCPD), Hancock County Sheriff's Department (HCSD), Worth County Sheriff's Department (WCSD), and the Clear Lake Police Department (CLPD). Since Affiant submits this affidavit for the limited purpose of supporting an application for a criminal complaint, it does not set forth every fact that Affiant or others have learned during the course of this investigation.

5. Affiant makes this affidavit in support of a criminal complaint charging ROGERS with violations of 21 U.S.C. § 843(a)(3) and § 846 (Obtaining and Attempting to Obtain a Controlled Substance by Fraud, Deception, and Subterfuge), as well as 42 U.S.C. § 1320d-6(a)(2), and (b)(2) and (b)(3) (Criminal HIPAA Violations), and 18 U.S.C. § 2(b) (Aiding and Abetting).

Background

HIPAA and the Privacy Rule

6. The Health Insurance Portability and Accountability Act (HIPAA) was passed in 1996 with two objectives: (1) ensure individuals would be able to maintain their health insurance between jobs, and (2) ensure the security and confidentiality of patient information and data. The public and private sector collaborated to develop HIPAA Standards. HHS published Rules related to two Standards, Privacy and Security, in 2003 and 2005. Privacy is defined as controlling who is authorized to access information. Security is defined as the ability to control access to, and prevent information from accidental or intentional disclosure to unauthorized persons; and, from alteration, destruction, or loss.

7. The *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") established a set of national standards for the protection of certain health

information. HHS issued the Privacy Rule to implement the requirement of the HIPAA Act. The Privacy Rule standards address the use and disclosure of individuals' health information—denominated as “protected health information” by organizations subject to the Privacy Rule—called “covered entities,” as well as standards for individuals' privacy rights to understand and control how their health information is used.

8. Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards. The term “health care provider” includes a provider of services, a provider of medical or other health services, and any other person furnishing health care services or supplies. 42 U.S.C. § 1320d(3). The term “covered entity” means, in part, a health care provider who transmits any health information in electronic form in connection with a transaction covered by the subchapter, 45 CFR § 160.103.

9. Mercy Medical Center, North Iowa (hereafter “Mercy”), operates in Mason City, Iowa as a health care provider, as defined by 42 U.S.C. § 1320d(3) and 45 CFR § 160.103.

10. Northern Iowa Therapy (hereafter “NIT”), operates in Waverly, Iowa as a health care provider, as defined by 42 U.S.C. § 1320d(3) and 45 CFR § 160.103.

Protected Health Information

11. The Privacy Rule protects all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information “protected health information” (hereafter “PHI”).

12. “Individually identifiable health information” is information, including demographic data, that relates to: (1) the individual’s past, present or future physical or mental health or condition, (2) the provision of health care to the individual, or (3) the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual, 45 CFR § 160.103.

Administrative Requirements

13. A covered entity must develop and implement written privacy policies and procedures that are consistent with the Privacy Rule, 45 CFR § 164.530(i).

14. A covered entity must designate a privacy official responsible for developing and implementing its privacy policies and procedures that are consistent with the Privacy Rule, 45 CFR § 164.530(a).

15. Workforce members include employees, volunteers, trainees, and may also include other persons whose conduct is under the direct control of the entity, 45 CFR § 160.103. A covered entity must train all workforce members on its privacy policies and procedures, as necessary and appropriate for them to carry out their functions, 45 CFR § 164.530(b). A covered entity must have and apply appropriate sanctions against workforce members who violate its privacy policies and procedures or the Privacy Rule, 45 CFR § 164.530(e).

Samantha Jo ROGERS’s Background

16. ROGERS is registered with the Iowa Department of Public Health as an occupational therapist under license number ending in 405, expiring on February 15, 2020.

17. ROGERS was hired by Mercy on October 7, 2013 as an occupational therapist in the Acute Rehab Unit/Skilled Nursing Unit. ROGERS left Mercy on July 31, 2018.

18. ROGERS was hired by NIT on September 7, 2017 as an Occupational Therapist

Facts in Support of Application

Orthopaedic & Neurological Rehabilitation, Inc. (ONR)

19. On February 28, 2015, ROGERS started as a staff Occupational Therapist for ONR in the Independent Order of Odd Fellows (hereafter, "IOOF") Home and Community Therapy Center. On January 24, 2017, IOOF's Regional Director of Operations, Jennifer Groen (hereafter, "Groen") was contacted by IOOF's Administrator and Director of Nursing (hereafter, "DON"). IOOF's Administrator and DON reported to Groen that a Restorative Aide in the Therapy Department had noticed prescription pills missing from her purse on several occasions. She began counting her pills and identifying who was working in the Therapy Department when the pills would have come up missing. On the evening of January 24, 2017, the Restorative Aide went to the Administrator and DON with her concerns about ROGERS. Groen was then contacted and Groen immediately contacted ROGERS and informed her of the allegations. The Administrator told Groen that he watched the surveillance video, and ROGERS can be seen going into the Restorative Aide's office and going through her purse. On January 26, 2017, after being told of the video, ROGERS admitted to Groen that she took the pills from the Restorative Aide's purse.

20. On January 27, 2017, ROGERS' employment with ONR at the IOOF facility was terminated.

Mercy

21. On or around October 7, 2013, Mercy hired ROGERS to be an occupational therapist in the Acute Rehab Unit/Skilled Nursing Unit.

22. On or around May 15, 2017, a float nursing aide reported she was missing 5 pain pills from her purse that was in the Skilled Nursing Unit staff break room. ROGERS was working with a patient that day in the room next to the break room. When Human Resources employee Connie Morrison (hereafter, "Morrison") interviewed ROGERS she was visibly upset. Morrison had been told that weeks earlier ROGERS was fired from IOOF for missing pain medication. Two staff members shared with Morrison that ROGERS had asked them for pain medication several months earlier.

23. As part of Morrison's investigation, she learned that another nurse aide had reported she was missing pain medication. She said her purse was in the Acute Rehab Unit area where everyone puts their belongings and when she looked for her medication at the end of her shift it was gone. Morrison asked that nurse aide if she recalled what date the incident had occurred. In reviewing her time card, she told Morrison it was March 7, 2017. Morrison checked and saw that ROGERS was working "PRN" (that is, "as needed") that day.

24. On October 7, 2013, ROGERS signed a Mercy-North Iowa/New Hampton Confidentiality and Network Access Agreement. In part, ROGERS attested to the fact that she will access, use or disclose Confidential Patient Information (PHI) only for legitimate purposes of diagnosis, treatment, obtaining payment for patient care, or performing other health care operations functions permitted by HIPAA and she will only access, use or disclose the minimum necessary amount of information needed to carry out my job responsibilities.

25. Additionally, ROGERS agreed to not access, use or disclose Confidential Information in electronic, paper or oral forms for personal reasons, or for any purpose not permitted by Mercy/CHE Trinity Health policy.

Northern Iowa Therapy

26. Northern Iowa Therapy (NIT) is the contracted home health therapy provider for Cerro Gordo County Department of Public Health (hereafter, "CGPH")

27. On or around December 18, 2017, Captain Mike McKelvey (hereafter, "Captain McKelvey") from MCPD contacted Tina Steere (hereafter, "Steere"), the office manager for NIT, and stated that the MCPD was investigating a few incidents in Mason City and Ventura, Iowa, where someone was showing up at patients homes, claiming to be with public health to pick up unused medications from patients for recent surgeries. Valerie Conklin (Conklin), Family and Community Health Service Manager for Cerro Gordo County Department of Public Health, further told Steere that in all conversations with the patients, the female description was the same, that she was professional and that she drove a nice car, but no specific vehicle description. She appeared to have knowledge about healthcare and some sort of medical background, as she did sound like she knew what she was saying, at least to the patients.

28. Steere took the patient names and learned through the electronic medical records (EMR) system how to run a report, called the PHI Access Summary Report, to find out who had accessed the patient's medical record. Steere also recorded the dates of service for each patient and who treated the patient.

29. On September 15, 2017, ROGERS signed a Laptop Agreement with NIT and was issued a laptop with the serial number 4GZ4WB2. NIT's Laptop Policy states that NIT has adopted this policy "for all employees access Electronic Personal Health Information (EPHI) to comply with HIPAA" and that "Employees must sign and return the Laptop Agreement before the laptop [is] issued or used at a facility."

30. Under "Use of Laptops", the Laptop Policy states "Computers, associated equipment, and software are for business use only, not for personal use of the user or any other person or entity." Additionally, "Users will obey all HIPAA guidelines concerning behavior and communication that apply to computer use."

31. On April 9, 2018, ROGERS signed an Acknowledgement of Annual Compliance Training and Policies that stated, "My signature affixed to this form acknowledges that I have received information and training on the following policies [including HIPAA] and agree to comply." ROGERS also answered a question on a knowledge quiz: "If you suspect someone is violating the organization's privacy policy, you should (a) Confront the individual involved and remind him or her of the rules; (b) Watch the individual involved until you have gathered evidence against him or her; (c) Report your suspicions to the organization's privacy officer and supervisor; (d) Both (a) and (c)." ROGERS circled the letter (d).

Patient R.C.

32. According to Medicare claims, from October 25 to October 27, 2017, patient R.C. underwent heart surgery at Mercy. From November 1 to November 3, 2017, R.C. was readmitted to Mercy with a diagnosis of post-procedural complications and disorders of the circulatory system. Patient R.C. was then transferred to Mercy Medical Center in Des Moines from November 3 to November 9, where he underwent an additional vascular procedure.

33. From November 28 to December 7, 2017, R.C. received one visit from a Physical Therapist employed by NIT. R.C. had previously received 3 treatment visits from a licensed physical therapist, J.S., at NIT from July 14 to 27, 2017. R.C. did not receive occupational therapy from NIT.

34. On or around December 8, 2017, patient R.C.'s wife called CGPH and informed Conklin that there had been a visitor to their home. R.C. also has insurance from the Veteran's Administration (VA) and the female visitor told R.C.'s wife that she was with a new program and was at the home to check out the medical equipment. The female wanted to give R.C. a TENS unit. R.C.'s wife said that he could not have a TENS unit because he had a pacemaker. R.C.'s wife said the female visitor wanted to go into the bathroom to check out the other medical equipment. R.C.'s wife didn't trust her but let her go in the bathroom, but not unattended. R.C.'s wife did not believe any medication was taken.

35. On August 7, 2018, R.C.'s wife told Captain McKelvey of MCPD that the female visitor asked about R.C.'s medications. R.C.'s wife told her that the VA does R.C.'s medications, so she did not want public health to do anything with the medications. The visitor also offered to give R.C.'s wife a massage. ROGERS' job with NIT does not have anything to do with medications or massages.

36. According to NIT's PHI Access Summary Report run by Steere, ROGERS accessed an Evaluation Form and Treatment Encounter Note Form from R.C.'s medical record on November 15, 2017.

37. According to Mercy's log of medical record access, ROGERS accessed R.C.'s medical record on November 19, 2017. Mercy does not have any records of R.C. being a patient of ROGERS while she was employed with them.

38. Below is a summary of the timeline as it relates to R.C. and ROGERS:

Date(s)	Event
10/25/2017-10/27/2017 11/1/2017-11/3/2017 11/3/2017-11/9/2017	R.C. Inpatient Stays at Mercy
11/15/2017	ROGERS Accesses R.C.'s NIT Medical Record
11/19/2017	ROGERS Accesses R.C.'s Mercy Medical Record
11/27/2017 – 12/7/2017	R.C. Receives 1 Physical Therapy in home visit from NIT
12/8/2017	R.C.'s wife calls CGPH to report suspicious female visitor

Patient D.H.

39. On December 4, 2017, patient D.H. called CLPD. D.H. told the responding officer that on that day a female entered the back door of her home. This was after lunch but before 1:00 pm. This female said she was with a public nurse type agency and wanted to look for out-of-date drugs. The female was described as about 30 to 40 years old, had light brown hair, was smaller in size and thin. The officer noted that D.H. has a prescription for oxycondone but did not fill it because it makes her ill.

40. Conklin from CGPH also spoke to D.H. D.H. told Conklin when the female came to their home, she said she was there to review her medications. D.H. argued with the female visitor and told her that she takes care of her own medications. The female proceeded to start going through D.H.'s organizer tote and D.H. yelled at her and told her to get out of

her things and get out. Conklin noted that in this incident, the female was more forceful in her approach.

41. D.H. received in home therapy services from NIT between November 9 and November 28, 2017, both Occupational Therapy and Physical Therapy.

42. NIT's PHI Access Summary Report shows ROGERS accessing D.H.'s medical record on the following dates: November 11, 14, 15, 16, 19, 22, 27, and 28, 2017, and December 1, 2017. On December 1, 2017, ROGERS accessed D.H.'s Discharge Summary Form and Treatment Encounter Note Form. ROGERS was not listed as a treating therapist for D.H. in a December 2017 report from NIT to CGPH.

43. Below is a timeline as it relates to D.H. and ROGERS:

Date(s)	Event
11/8/2017, 11/10/2017, 11/13/2017, 11/15/2017, 11/16/2017, 11/17/2017, 11/21/2017	D.H. RD R.C. Receives Physical and Occupational Therapy in home visits from NIT
11/11/2017, 11/14/2017, 11/15/2017, 11/16/2017, 11/22/2017, 11/27/2017, 11/28/2017, 12/1/2017	D.H. RD ROGERS Accesses R.C.'s NIT Medical Record
12/4/2017	D.H. calls CLPD and CGPH because of a suspicious female visitor that roots through her medications

Patient G.B.

44. On or around mid to late October 2017, patient G.B. told Conklin from CGPH that around 3-4 weeks after she was discharged from home health, a female came to see her at her home stating that she was there for a follow up visit. It was a white female, mid to late 20's, with brown hair. The female visitor told G.B. that she would help her dispose of unused medications so G.B. gave her unused Percocet.

45. Patient G.B. received in home therapy services by Physical Therapists and Occupational Therapists from NIT between August 29, 2017 and September 13, 2017. ROGERS did not perform any of these services.

46. On October 23, 2017 and October 25, 2017, ROGERS accessed the Evaluation Forms and Treatment Note Encounter Forms in G.B.'s medical record at NIT.

47. Below is a timeline as it relates to G.B. and ROGERS:

Date(s)	Event
8/29/2017-9/13/2017	G.B. Receives Physical and Occupational Therapy in home visits from NIT
10/23/2017 10/25/2017	ROGERS Accesses G.B.'s NIT Medical Record
Mid-Late October 2017	G.B. calls CGPH and describes a female visitor who offered to dispose of G.B.'s unused medication (Percocet) for her.

Patient D.H.

48. On February 14, 2018, Hancock County Sheriff's Department (HCSD) responded to a possible burglary at a residence in Forest City, Iowa, belonging to patient D.H. The only thing reported missing was a bottle of hydrocodone.

49. Following the break-in, D.H. installed surveillance cameras and a security system in the house. On March 7, 2018, the homeowners' granddaughter was notified that someone had tripped the security system. The surveillance camera captured a female with brown hair and a headband entering the house while no one was home. The female is seen quietly moving through the living room and kitchen, opening a cabinet, and moving away from the camera view into another part of the house. Twenty minutes prior to when the female

entered the residence, there was a missed call on the residence phone from a private caller. HCSD photographed the scene when responding to the second break-in.

50. On May 19, 2018, HCSD again received a call regarding surveillance footage at the residence of D.H. D.H.'s wife, V.H., stated that she believed the suspect came back and they captured a license plate this time. The license plate on the vehicle came back to a black Ford Edge registered to ROGERS.

51. According to Mercy's medical records access logs, ROGERS viewed D.H.'s medical record on February 13, 2018, April 29, 2018, and May 12, 2018. Mercy does not have any record of D.H. being treated by ROGERS.


52. Below is a timeline as it relates to D.H. and ROGERS:

Date(s)	Event
2/13/2018	ROGERS Accesses D.H.'s medical record at Mercy
2/14/2018	HCSD receives a report of a breaking and entering and possible burglary at the home of D.H.
3/6/2018	Surveillance camera footage in the home of D.H. captures a female entering the home and looking around
4/29/2018	ROGERS Accesses D.H.'s medical record at Mercy
5/12/2018	ROGERS Accesses D.H.'s medical record at Mercy
5/19/2018	Surveillance camera footage in the home of D.H. captures a plate on a vehicle in the driveway registered to ROGERS

Conclusion


53. Based on the foregoing information, the affiant submits there is probable cause to believe there is probable cause to believe that ROGERS has committed a violation of 21 U.S.C. § 843(a)(3) and § 846 (Obtaining and Attempting to Obtain a Controlled Substance by Fraud, Deception, and Subterfuge), as well as 42 U.S.C. § 1320d-6(a)(2), and (b)(2) and (b)(3) (Criminal HIPAA Violations), and 18 U.S.C. § 2(b) (Aiding and Abetting).

Respectfully submitted,



Teresa A. Dailey
Special Agent
HHS/OIG

Subscribed and sworn to before me on October 12, 2018:



MARK A. ROBERTS
United States Magistrate Judge
Northern District Of Iowa