

AO (Rev. 5/85) Criminal Complaint

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

vs.

CASE NUMBER: 6:12-mj- **1378**

DALE MUNROE

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about October 25, 2010, in Osceola County, in the Middle District of Florida, defendant did knowingly use and cause to be used a unique health identifier, obtain individually identifiable health information relating to an individual, and disclose individually identifiable health information to another person, with the intent to sell, transfer, and use such individually identifiable health information for commercial advantage, personal gain, and malicious harm, in violation of Title 42, United States Code, Sections 1320d-6(a) and 1320d-6(b)(3). I further state that I am a Special Agent with the Federal Bureau of Investigation, and that this Complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof: Yes No



Signature of Complainant
Andrew W. Culbertson

Sworn to before me and subscribed in my presence,

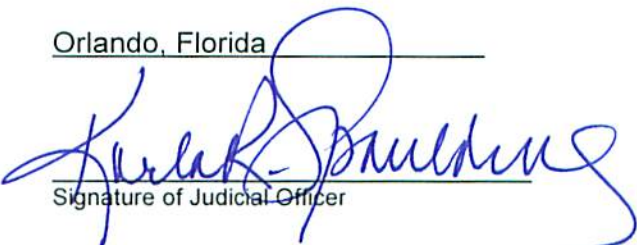
8/13/12

at

Orlando, Florida

KARLA R. SPAULDING
United States Magistrate Judge

Name & Title of Judicial Officer



Signature of Judicial Officer

STATE OF FLORIDA

CASE NO. 6:12-mj- 1378

COUNTY OF ORANGE

AFFIDAVIT

I, Andrew W. Culbertson, being duly sworn, depose and state under penalty of perjury that the following is true and correct to the best of my information and belief:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI) assigned to the Orlando Resident Agency of the Tampa Division. I have been employed as a Special Agent for the FBI for almost two years. Prior to my employment with the FBI, I worked in public accounting as an auditor of for-profit, not-for-profit, and employee benefit plan organizations for almost seven years, and still maintain an active Certified Public Accountant (CPA) license in the Commonwealth of Kentucky.

2. As set forth below, there is probable cause to believe that DALE MUNROE has committed a violation of Title 42, United States Code, Section 1320d-6(a). This affidavit is based on my personal participation in this investigation, review of records, and conversations with other law enforcement agents, investigators and analysts participating in this investigation. This affidavit does not set forth all of my knowledge and information concerning this investigation, but rather only those facts that I believe are necessary to establish probable cause to support the issuance of a criminal complaint and arrest warrant for MUNROE.

Overview of Statutes and Florida Hospital

3. Title 42, United States Code, Section 1320d-6(a) provides as follows:

A person who knowingly and in violation of this part--

(1) uses or causes to be used a unique health identifier;

- (2) obtains individually identifiable health information relating to an individual; or
- (3) discloses individually identifiable health information to another person,

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

4. Title 42, United States Code, Section 1320d-9(b)(3) provides as follows:

The term "HIPAA privacy regulation" means the regulations promulgated by the Secretary under this part and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).

5. Title 42, United States Code, Section 1320d provides, in part, as follows:

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

6. According to its Internet site, "Florida Hospital is one of the country's largest not-for-profit health care providers with 22 campuses serving communities throughout Florida." I have been advised that Florida Hospital is a "covered entity" for purposes of HIPAA (Health Insurance Portability and Accountability Act of 1996).

Summary

7. Since approximately October 2011, the FBI, the Florida Department of Financial Services (DFS), and other law enforcement personnel have been involved in an investigation involving the unauthorized access of hospital patients' Protected Health Information (PHI) identifiers, the removal of the PHI from the hospital, the compensation for providing the PHI to another individual who would benefit financially from the PHI, and the subsequent contact of the inappropriately accessed hospital patients in attempt to solicit those patients to sign up for the services of attorneys to represent them and chiropractors to treat them.

8. MUNROE was hired on July 5, 2006 at the Celebration, Florida location of Florida Hospital. During his entire employment with Florida Hospital, MUNROE worked as a Registration Representative in the Emergency Department where he would register patients as they came in the main emergency entrance, to include patients brought in by ambulance.

9. MUNROE signed many documents during the hiring process at Florida Hospital that described the hospital's policies related to, (1) the employee's compliance with the hospital's policy regarding the security of patient data (Orientation Sign-off Sheet), (2) the employee's compliance with HIPAA laws and regulations as they pertain to PHI (Florida Hospital Policy 700.106), and (3) the employee's compliance with the hospital's policy regarding the employee's access to the hospital's computer system containing PHI (Confidentiality Statement). MUNROE was required to follow the policies of Florida Hospital and for complying with federal and Florida law. As a Florida Hospital employee, MUNROE was "authorized to access confidential information

needed to perform their job responsibilities.” Like every Florida Hospital employee, **MUNROE** was only authorized to access the patient records necessary to do his job:

Employees must maintain the confidentiality of information at all times by obeying strict ethical standards and legal requirements to keep it secure. In accordance with HIPAA regulations, Florida Hospital staff shall make reasonable efforts to ensure confidentiality of protected health information [Florida Hospital Policy 700.106].

10. Beginning in late 2009, and continuing throughout his employment, **MUNROE** accessed on Florida Hospital's computer system an unusually high number of patient records utilizing a screen in the computer system identified as “RS23.” The RS23 screen lists ten Emergency Department patient records at a time and can be scrolled through by sets of ten patients very quickly. Patients who have been admitted for injuries related to motor vehicle accidents can be quickly identified in the RS23 screen. The RS23 screen can be adjusted to output the Emergency Department patient lists for other Florida Hospital locations throughout central Florida, not just the location at which the screen is being accessed (the employee's location). In connection with this investigation, I obtained information to compare **MUNROE**'s number of access of patient records to that of other employees in similar positions at the location where he worked. I have been advised that a typical employee accessed approximately 12,100 patient records utilizing the RS23 screen from 2009 through the third quarter of 2011 in the performance of their job duties. **MUNROE** accessed over 763,000 patient records utilizing the RS23 screen from 2009 through the third quarter of 2011. A significant amount of those patient records that **MUNROE** searched were of patients who had been admitted at Florida Hospital locations other than the Celebration, Florida location where he worked. Interviews of hospital personnel indicate that it would be extremely

rare to need to search for patients registered in the Emergency Department of a Florida Hospital location other than the location at which the employee worked.

11. Florida Hospital performed an analysis of the patient records accessed by MUNROE during his employment. Some of the patient records were viewed for less than one second, which suggested that MUNROE did not view the records long enough to capture the patient data, but instead was scrolling through the lists of ten patients at a time in the RS23 screen looking a particular type of patient. Some of the patient records were viewed for longer than one second, and in many of these cases at least one of the ten patients on the screen were involved in a motor vehicle accident. Because patients involved in motor vehicle accidents ultimately ended up receiving solicitation phone calls, Florida Hospital developed the following criteria to determine the patients whose records and PHI were inappropriately accessed by MUNROE: patient records that were searched for longer than one second and that were either (a) involved in a motor vehicle accident or (b) accessed further utilizing additional screens. Using those criteria, Florida Hospital has identified more than 12,000 patients that fit this definition of inappropriate access of their PHI.

12. It is possible in Florida Hospital's computer system for an employee to be logged onto more than one computer at once. It was also common at Florida Hospital for employees to share their access codes to the computer system. Florida Hospital has produced reports which, combined with MUNROE's payroll records, show that MUNROE was clocked in and only logged onto one computer (all activity logged on only one terminal) at the time most of the patient record searches were performed, including those patients who ultimately received solicitation phone calls, eliminating the possibility

that anyone other than MUNROE had accessed those patient records without a legitimate business need.

13. Some of the motor vehicle accident patients identified in paragraph 11 received a phone call within a couple of days to about one week after their visit to a Florida Hospital location from someone offering them a lawyer or chiropractor referral. The patients were called at a phone number that the patient had given to Florida Hospital personnel during registration. The caller knew specifics about the motor vehicle accident and the patients' treatment at Florida Hospital. In any case where the patient asked the caller how their information had been obtained, the caller either attempted to give an excuse that the information was public record (in fact, the information is not public record until 60 days after the accident, by Florida law), or the caller discontinued the phone call without any explanation.

14. I have been advised by agents with the DFS that, over the past few years, there has been a significant increase in the amount of prearranged intentional automobile accidents for insurance fraud purposes (staged vehicle accidents) in the State of Florida. The scheme involves a "runner" who would solicit individuals that had automobile insurance to be participants in a staged vehicle accident. The "runner" would usually offer to pay the participant to be involved in the staged vehicle accident. The "runner" would then arrange a staged vehicle accident with the willing participants. Once the police arrived to render aid and document the accident, the participants would provide false statements regarding the accident and advise the police officer that they sustained soft tissue injuries as a result of the accident. The "runner" would then direct the participants involved in the accident to go to specific clinics for treatment. When the

participants arrived at the clinics, they would be counseled either by the "runner" or the clinic personnel to inform the clinic's Chiropractor of the same soft tissue injuries. The clinic would then bill the participants' insurance for the treatment rendered to them. The clinic manager would pay the "runner" for coordinating the staged vehicle accident and for referring the participants to the manager's clinic. Due to the State of Florida Personal Injury Protection (PIP) law, which protects each person involved in an accident, regardless of fault, the insurance companies are required to pay up to \$10,000 per person for medical treatment under the PIP portion of the insurance policy.

15. A phone number used by one of the solicitors described in paragraph 13 was found to have also been in contact with an individual with the initials of S.K., who is the registered agent for multiple chiropractic clinics and an injury hotline in the central Florida area. S.K. is associated with a "medical center" and an injury hotline. I have been advised that S.K. is also known to employ "runners" to gather people to participate in staged vehicle accidents for the purpose of having those participants seek treatment at S.K.'s clinics and bill the participants' insurance companies for their treatment. An individual who was in a motor vehicle accident on October 22, 2010 was transported via ambulance to the Emergency Department at the Winter Park, Florida location of Florida Hospital for treatment. This patient's data was accessed by MUNROE on October 25, 2010 and the patient subsequently received a solicitation phone call in which the caller stated that he represented the injury hotline (with which S.K. is associated) and that the patient would need to seek treatment from a "Doctor M_____"¹ at a clinic in the "Metro West area" in Orlando, Florida. The medical center associated with S.K. is located in

¹ The last name of this Doctor has been redacted from this Affidavit.

the Metro West area and is managed by a doctor with the same last name that was mentioned in the solicitation call. S.K. is the registered agent of the medical center.

16. A review of MUNROE's phone records show regular and significant contact between MUNROE and S.K., which can be summarized as follows:

- a. MUNROE accessed a patient record and had telephonic contact through either a voice call or a text message with S.K.
- b. S.K. had telephonic contact with another individual who ultimately contacted the patient to offer the patient a referral for a lawyer or a chiropractor. Typically, if a lawyer referral was offered, the lawyer would request that the patient see a chiropractor for diagnosis.

17. A review of MUNROE's bank records (joint account with his wife) showed that MUNROE received two checks from the wife of S.K., who is also suspected of participating in S.K.'s scheme, and MUNROE received one check from S.K. himself. MUNROE's wife also received two checks from S.K.'s wife. In addition to these checks, MUNROE had regular cash deposits in even and regular amounts. Cash deposit amounts around the time that the checks were received were the same as the amounts of the checks during that time (i.e., a check would be received for \$300 and two weeks later cash would be deposited for \$300, and so on). From the beginning of 2009 through January 2011, MUNROE received \$7,840 in cash that was deposited into his joint bank account, and \$1,600.00 in checks that were deposited into his joint bank account. MUNROE's wife received \$1,200.00 in checks that were deposited into the joint bank account. Agents are unaware of MUNROE having any other employment during the time that he was employed at Florida Hospital. MUNROE's wife was interviewed on March 29, 2012. At one point in that interview, MUNROE's wife was shown two checks written to her back in 2009 from S.K.'s wife. MUNROE's wife stated that she and her

mother cleaned the home of S.K.'s wife. When MUNROE's wife was asked if her mother were home at the time and whether the agents could ask her mother about cleaning the home of S.K.'s wife, MUNROE's wife said that she did not want to get her mother involved in this. MUNROE's wife was told that she was caught in a lie, she nodded, and then she said that she "did not recall what the checks were for."

18. On July 12, 2011, MUNROE was involuntarily terminated from his employment at Florida Hospital for a "HIPAA Breach." MUNROE had inappropriately accessed the records of a Florida Hospital doctor who had been fatally shot in a Florida Hospital parking garage. At this time, Florida Hospital was unaware of MUNROE's unauthorized access to other patients' records.

19. On August 8, 2011, a patient was involved in a motor vehicle accident and treated at the Celebration, Florida location of Florida Hospital. The patient gave the contact information for her mother, who happened to be a Florida Hospital employee and nurse. On August 14, 2011, the patient's mother received a phone call in which the caller asked to speak to her daughter and knew all about the automobile accident. The caller offered a lawyer referral. The patient's mother asked the caller how her information was obtained and the caller said that it was public record. The patient's mother told the caller that she knew the information was not public record and the call was terminated. The patient's mother called in a complaint to Florida Hospital about the information breach. Florida Hospital reviewed the access records of the patient and determined that MUNROE's wife and another employee with the initials of A.B. both accessed the patient's information and had no business related reason to access it. Both were interviewed about the incident, denied having accessed the information, and

were subsequently terminated from Florida Hospital. It was at this point that Florida Hospital initiated the in-depth records search that revealed the quantity of MUNROE's data access.

20. MUNROE was interviewed on March 15, 2012. The following is a summary of pertinent portions of that interview:

a. MUNROE stated that he thought that he already knew why he was being interviewed by the FBI. MUNROE stated that he started working at Florida Hospital in 2006 in Emergency Department registration. MUNROE stated that he shared his password to the Florida Hospital computer system with "Marvis," "Demna," "Tyree," and even his boss. MUNROE claimed that he never provided patient information out of the hospital, though he admitted that he had accessed patient information as part of his job. MUNROE stated that other people were probably using his access, too. MUNROE stated that was his story and that he was "sticking to it."

b. The agents described to MUNROE some of the evidence that implicated him. The agents accused MUNROE of lying to them. MUNROE did not deny lying at any time he was accused and was visibly upset. MUNROE was asked what he was afraid of. MUNROE responded that he was worried about being sexually assaulted in prison. MUNROE stated that he had been instructed by an attorney not to talk to law enforcement. MUNROE could not remember the attorney's name, and he stated that he did not currently have an attorney. MUNROE stated that he was glad that the interviewing agents were not getting angry with him for not providing information. When asked what would clear his mind, MUNROE joked that a vacation to Rikers Island (a prison in New York) would help. When MUNROE was asked if he thought that his

wife would cooperate and reveal MUNROE's participation in the scheme, he stated that he hoped she would not "throw him under the bus."

21. MUNROE was interviewed again on March 29, 2012. The following is a summary of pertinent portions of that interview:

a. MUNROE identified his user name. MUNROE could not explain why his user name was used to access several hundred thousand patient records via the RS23 screen at Florida Hospital.

b. MUNROE reviewed a \$1,000 check made payable to him from S.K. and two checks of \$300 each made payable to him by S.K.'s wife. MUNROE stated that S.K. was a friend who he met at Florida Hospital while he was working. MUNROE stated that S.K. and S.K.'s wife had brought a family member to the hospital and that MUNROE had become friendly with S.K. and attended parties at S.K.'s home. MUNROE stated that he was having financial difficulties and that the money from S.K. was loans. MUNROE stated that he had been acquainted with S.K. for about two years. MUNROE stated that he received loans from S.K. six or seven times.

c. MUNROE reviewed two additional checks that was made payable to MUNROE 's wife in the amount of \$600 each from the account of S.K.'s wife. MUNROE stated that MUNROE 's wife was not friends with S.K. or S.K.'s wife and that MUNROE 's wife had done some cleaning for them.

d. MUNROE stated that he had no income other than his income at the hospital, except that he would on occasion help his father who had a small landscaping business. MUNROE reviewed a document that detailed cash deposits into his account from 2009 to 2011, totaling \$8,236. MUNROE stated that the cash deposits

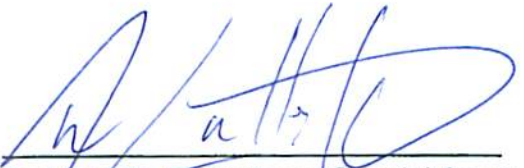
were money that he obtained from taking cash advances from a Cash Advance store. MUNROE was asked to identify the Cash Advance store from which he borrowed money, and MUNROE stated that he used all of the Cash Advance stores to borrow money.

e. MUNROE reviewed telephone records. MUNROE identified his telephone number and his wife's telephone number. MUNROE was shown the telephone number for S.K. MUNROE originally stated that he did not know who that telephone number was for. MUNROE was shown the frequency of his calls and text messages back and forth to the telephone number. MUNROE admitted that the telephone number was S.K.'s telephone number. MUNROE had no explanation for the hundreds of telephone calls and text messages back and forth with S.K. during the time that he was supposed to be working at Florida Hospital.

f. MUNROE stated that he had not seen or spoken with S.K. since MUNROE and MUNROE's wife were fired by Florida Hospital. MUNROE stated that S.K. still "owed him money." When MUNROE made this comment, agents asked MUNROE, "for information you provided?" MUNROE nodded his head up and down in the affirmative and began chuckling. MUNROE stated that he had nothing else to say and indicated that he would call if he had anything else.

22. Based on the foregoing, I respectfully submit that there is probable cause to believe that MUNROE has committed a violation of Title 42, United States Code, Section 1320d-6(a) and request that a warrant be issued for his arrest.

23. This completes my affidavit.



Andrew W. Culbertson, Special Agent
Federal Bureau of Investigation

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 13th DAY OF
AUGUST 2012, AT ORLANDO,
FLORIDA.



THE HONORABLE KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE