

UNITED STATES DISTRICT COURT

for the

Central District of California

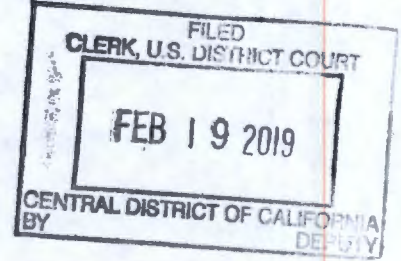
United States of America

v.

MICHAEL ANTHONY SIMENTAL,

Defendant(s)

MJ 19-00581
Case No.



CRIMINAL COMPLAINT

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 November 8, 2018, in the county of Riverside in the Central District of California, the defendant(s) violated:

Code Section

21 U.S.C. §§ 841(a)(1), (b)(1)(C)

Offense Description

Distribution of hydrocodone

This criminal complaint is based on these facts:

Please see attached affidavit.

Continued on the attached sheet.

JS

Complainant's signature

Jessica Lohner, DEA Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

2/19/19

Suzanne H. Segal

Judge's signature

City and state: Los Angeles, California

Hon. Suzanne Segal, U.S. Magistrate Judge

Printed name and title

ARREST WARRANT/DETENTION

BB

AFFIDAVIT

I, Jessica Lohner, being duly sworn, declare and state as follows:

I. INTRODUCTION

1. I am a Special Agent ("SA") with the Drug Enforcement Administration ("DEA"), and have been so employed since October, 2015. I am currently assigned to the DEA's Riverside District Office, Tactical Diversion Squad ("TDS"), investigating offenses related to controlled substance trafficking, illegal diversion of controlled pharmaceutical substances, and money laundering. I attended and successfully completed 20 weeks of Basic Agent Training at the DEA Academy, Quantico, Virginia. The training included numerous phases comprised of classroom education and proficiency, practical application and evaluation, and tactics/firearms. During my employment with the DEA, I have participated in numerous narcotic investigations, conducted physical surveillance, executed numerous search warrants, participated in enforcement operations, conducted suspect interviews, executed narcotic seizures, and handled several confidential sources. Prior to joining the DEA, I was employed with the United States Department of Homeland Security Customs and Border Protection. I was a Border Patrol Agent for approximately eight and a half years. During this time I was a certified narcotics canine handler for approximately six years. During this time I was also detailed to the DEA's Riverside District Office, Task Force Group 1, for approximately three months.

II. PURPOSE OF AFFIDAVIT

2. This affidavit is made in support of a criminal complaint against Michael Anthony SIMENTAL, M.D. ("SIMENTAL") for a violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(C) (distribution of hydrocodone): specifically, that on or about November 8, 2018, in Riverside County, within the Central District of California, SIMENTAL, while acting and intending to act outside the usual course of professional practice and without a legitimate medical purpose, knowingly and intentionally distributed hydrocodone, a Schedule II narcotic drug controlled substance.

3. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information obtained from various law enforcement personnel and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested complaint 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.

III. BACKGROUND REGARDING PRESCRIBING CONTROLLED SUBSTANCES

4. Based on my training and experience with TDS, and the consultation of other agents, I know that the distribution of controlled substances must be in compliance with certain federal rules and regulations, as explained in part and in summary in the following subsections:

a. Title 21, United States Code, Section 812 establishes schedules for controlled substances; 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. 21 C.F.R. Part 1308 provides further listings of scheduled drugs. Controlled substance pharmaceuticals are listed as controlled substances from Schedule II through V, with Schedule II identifying the drugs considered the most dangerous and with the least legitimate medical value. There are other drugs that are available only by prescription but are not classified as controlled substances, such as antibiotics, and other drugs that can be acquired over the counter, such as aspirin.

b. Pursuant to Title 21, United States Code, Section 822, controlled prescription drugs may only be prescribed, dispensed, or distributed by those persons who are registered with the Attorney General of the United States to do so (with some exceptions, such as delivery persons). The authority to register persons has been delegated to the DEA by the Attorney General.

c. Section 1306.04 of Title 21 of the Code of Federal Regulations 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."

d. 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.").

IV. STATEMENT OF PROBABLE CAUSE

A. Summary and Background

5. I am investigating SIMENTAL for unlawfully prescribing controlled substances outside the usual course of professional practice and without a legitimate medical purpose, including opiate painkillers such as hydrocodone (commonly known by the brand names Vicodin and Norco) and hydromorphone (commonly known by the brand name Dilaudid), and benzodiazepine sedatives such as alprazolam (commonly known by the brand name Xanax).

According to records for SIMENTAL from the website of the Medical Board of California ("MBC"), he is a family medical practitioner with no board certifications, and thus he has no known specialization in pain management or psychiatry. SIMENTAL is employed as a physician at the Kaiser Permanente ("Kaiser") medical facility located at 10800 Magnolia Avenue in Riverside, California. On October 26, 2018, I spoke with a representative from Kaiser requesting their cooperation with the investigation in this matter. Both during that communication and others that have followed, Kaiser has cooperated with the investigation, including answering investigators' questions about technology, safeguards, and common practices at Kaiser, and providing records in response to subpoenas and search warrants.

6. This investigation began following the overdose death of SIMENTAL's patient Bonita Joslen ("B. Joslen") of mixed drug intoxication, which occurred on or about June 28, 2018 at the residence that she shared with her husband (and also a SIMENTAL patient) Robert Joslen ("R. Joslen"). Post-mortem toxicology

found the presence of multiple drugs in B. Joslen's system, including the Schedule II narcotics morphine, codeine, and hydromorphone. A forensic pathologist concluded that only the morphine was within lethal range, albeit at the lower end. Investigators obtained a report from the Riverside County Sheriff - Coroner Division regarding the investigation at the scene of B. Joslen's death, which states that the investigator found multiple medications at the scene, including an empty hydrocodone bottle that belonged to her husband R. Joslen.

7. On November 15, 2018, we executed federal search warrants at SIMENTAL's Corona residence, at his medical office at the Riverside Kaiser facility, and at R. Joslen's Jurupa residence. As set forth below, we secured various incriminating evidence from the searches of the residences, and SIMENTAL and R. Joslen submitted to interviews described below.

8. Kaiser has continued to provide records to us thereafter in response to subpoenas and warrants, such as SIMENTAL's disciplinary and personnel records, specified patient records including for B. Joslen and R. Joslen, and his email communications over the Kaiser employee system. Moreover, we obtained an independent medical expert opinion from Dr. Rick Chavez following his review of SIMENTAL's prescribing history and his patient records for the Joslens. Dr. Chavez concluded, among other things, that the Joslens' "records were filled with confusing data and information provided that made absolutely no sense," that SIMENTAL's controlled drug prescribing "cannot be considered to be appropriate or legitimate in the usual course

of community and professional practice," and that SIMENTAL placed both of the Joslens at serious risk of overdose.

B. SIMENTAL's Disciplinary History

9. SIMENTAL has a recent disciplinary history with the MBC involving the excessive prescribing of narcotics. Specifically, in December 2016, in case number 18-2012-226103, SIMENTAL was disciplined by the MBC for gross negligence, repeated negligent acts, prescribing without appropriate prior examination and medical indication, and repeated acts of clearly excessive prescribing. SIMENTAL was placed on probation with the MBC for a period of two years, as of December 22, 2016.

a. The disciplinary order stemmed from an accusation charging that SIMENTAL, while employed at the same Kaiser Permanente facility in Riverside, excessively prescribed narcotic and other controlled drugs to at least three patients. For example, the accusation charged SIMENTAL with an "extreme departure from the standard of care" in prescribing narcotics and benzodiazepines to patient S.P., and cites conduct by SIMENTAL including prescribing "high doses of long and short-acting opioid analgesics for the patient without medical evidence of necessity;" "frequent early refills for medicine for various reasons without accountability;" prescribing such drugs despite "obtain[ing] imaging studies that were virtually negative followed by a negative physical examination;" prescribing despite obtaining "negative urine toxicology examinations," which "should be addressed for possible diversion, overtaking or lack of consumption of medicines;"

failing to create a "pain management agreement with [the patient] regarding his medications;" and prescribing benzodiazepines even though "[n]o psychological evaluation of the patient or a psychiatric consultation was ever completed to clinically validate the need for strong, ongoing benzodiazepines for this patient."

b. The accusation also identifies another patient, J.B., with "a history of abuse and addiction," for whom the patient's "Norco (hydrocodone) quantity was doubled with early refills between July 28, 2011 and August 9, 2011," and despite a "completely negative urine toxicology examination on October 25, 2011." According to the accusation, "[SIMENTAL's] medical records contain no discussion whatsoever of the reason for the negative test results," include a reference to an MRI order for the patient but no record "that it was ever completed," and lack any "established diagnosis to treat the patient with opioid analgesics for chronic pain."

c. The third patient, T.A., was receiving opioid drugs for various conditions, yet "none of them required large amounts of opioid analgesics." The accusation charged that SIMENTAL "was fully aware of the fact that the patient had an abuse history," including "a history of alcoholism, drug abuse, and aberrant drug behavior." SIMENTAL "prescribed Norco for the patient at high quantities of 10 to 12 tablets per day while having full knowledge of the fact that the patient had a history of alcohol abuse and could potentially put her liver at risk." Moreover, SIMENTAL "prescribed benzodiazepines to T.A. on a

regular basis despite the fact that there was no psychiatric diagnosis established for the need for such a sedative-hypnotic."

d. On April 14, 2016, SIMENTAL and the MBC entered a written settlement to the accusation, in which SIMENTAL admitted that the MBC "could establish a factual basis for the charges in the Accusation," and SIMENTAL thus "g[ave] up his right to contest th[e] charges" in the accusation. Under the stipulated terms of probation in the settlement, SIMENTAL was obligated, among other things, to undergo a prescribing practices course and to keep a "separate file or ledger, in chronological order" tracking "all controlled substances ordered, prescribed, dispensed, administrated, or possessed by" SIMENTAL.

10. During the November 2018 search of SIMENTAL's residence, investigators seized a copy of the MBC's investigation report leading to the filing of the Accusation. The investigation report included, among other things, the following:

a. During an interview in December 2012, S.P. informed investigators that he is an unemployed carpenter who became addicted to opiate drugs from prescriptions issued by SIMENTAL. S.P. was 18 years old when he first saw SIMENTAL in 2005; S.P. told SIMENTAL that he had back pain from a previous car accident, and SIMENTAL gave him a two-week prescription for 60 pills of hydrocodone. SIMENTAL increased the next prescription to 180 pills. As time passed, S.P. would see SIMENTAL one to two times per month for refills, and eventually

the hydrocodone prescriptions grew to 120 pills by the time he was 21 years old, and 200 pills the following year. By the time he was 23 years old, S.P. was taking 200 hydrocodone pills every 10 days, that is, 30-50 pills per day. S.P. learned that a friend was taking patches of fentanyl (a synthetic opioid that is 50 times more powerful than heroin), and at 23-years-old S.P. was able to obtain a prescription for 10 patches of 25-mg fentanyl from SIMENTAL "by simply asking for them." SIMENTAL decreased the volume of hydrocodone prescribed, but over the next four months SIMENTAL doubled the strength of the patches (to 50-mg) and increased the number of patches prescribed to 15. S.P. would occasionally file false police reports of thefts to justify receiving additional fentanyl patches "as suggested by Dr. Simental." Although S.P. complained of pain during his visits, SIMENTAL checked S.P.'s back "perhaps 3 times" total, and S.P. "may have been referred to have an x-ray done once." S.P. understood that SIMENTAL "was aware" that he "was using [the] prescriptions simply to 'get high.'" "It was evident to [S.P.] that SIMENTAL" knew this "because Dr. Simental would prompt [S.P.] during office visits on what to say when he wanted more medication," and SIMENTAL "also instructed [S.P.] not to go through Urgent Care and alerted [S.P.] that if he did, staff would question [the] prescriptions, which would set off 'red flags.'" After Michael Jackson's death, SIMENTAL told S.P. "that officials were 'cracking down' on the abuse of prescription drugs and that they had to be careful." In 2010, S.P. only saw SIMENTAL once during the year, but S.P. continued

to get prescriptions by contacting SIMENTAL by phone, including SIMENTAL's personal cellphone. (The next year, SIMENTAL changed the arrangement and required at least four office visits per year.) In July 2012, after S.P. sustained multiple drug-related arrests and became estranged from his family, S.P. allowed his mother H.P. to come to his office visits with SIMENTAL, and H.P. filed a complaint with the MBC soon thereafter.

b. MBC investigators also interviewed J.P., who is S.P.'s younger brother and also was SIMENTAL's patient. After turning 18 years old, J.P. learned that his brother was getting hydrocodone prescriptions from SIMENTAL "by simply making a complaint of pain" and decided to do the same. In September 2010, J.P. visited SIMENTAL and requested hydrocodone for a shoulder injury that occurred around eight years earlier. SIMENTAL began prescribing 60 pills of hydrocodone every week, and soon every three or four days. At SIMENTAL's instructions, J.P. went to an orthopedist, obtained an x-ray and cortisone shot, and then continued to receive SIMENTAL prescriptions for 60 pills of hydrocodone every three to four days. Five months later, J.P. tried taking his brother's fentanyl and asked SIMENTAL for 50-mg fentanyl patches. SIMENTAL prescribed ten patches every 30 days, and told J.P. that he would have to stop taking hydrocodone so that he wouldn't "become an addict like someone else we know," which J.P. understood referred to his brother. SIMENTAL also suggested that J.P. take pain management classes, but J.P. never did and SIMENTAL never followed up. Four months later, J.P. was receiving 15 patches for every 30

days and was able to obtain refills by phone. After his brother was arrested on drug charges in around July 2012, J.P. stopped seeing SIMENTAL and stopped abusing prescription drugs. (An MBC medical expert ultimately found that the prescribing to J.P. could not be ruled inappropriate because, among other things, J.P. in fact had a shoulder injury and chose to take medication in lieu of surgery. However, the MBC expert found that the prescribing to S.P. was an "extreme departure" from the appropriate standard of care.)

c. The brothers' father, M.P., informed the MBC investigators that at one point he confronted SIMENTAL, stating that SIMENTAL need to "back off on the dope" he was prescribing to S.P. SIMENTAL responded, among other things, that S.P. was a "big boy and could make decisions for himself."

d. Their mother, H.P., informed MBC investigators that in 2005 she confronted SIMENTAL about his prescribing to S.P., and that SIMENTAL at first responded by speaking about S.P.'s ear operations, but that SIMENTAL then "evaded their concerns by claiming patient confidentiality." When H.P. joined S.P. in visiting SIMENTAL in 2012, she asked SIMENTAL to reassess the drugs he was prescribing, asking him to give S.P. Prozac instead. SIMENTAL said he would do so but refused to discuss S.P.'s medications with her, and S.P. was never prescribed Prozac. Soon thereafter, H.P. caught her sons smoking the contents of fentanyl patches together, and S.P. eventually also admitted that he had begun using heroin. H.P.

ultimately filed a report with the MBC, which led to its investigation into SIMENTAL.

11. We also have obtained records of SIMENTAL's disciplinary records within Kaiser, which likewise include what I submit are serious allegations of misconduct by SIMENTAL, including among other things the following:

a. In 2013, SIMENTAL was also accused by a patient of maintaining an inappropriate relationship with him/her for the prior three years. The patient said that SIMENTAL was prescribing him/her "exorbitant" amounts of opioids and benzodiazepines, including giving him/her more than she needed, leading the patient to become addicted. SIMENTAL also began prescribing the same drugs in his/her family members' names, which SIMENTAL claimed he was doing to help make sure that he/she did not run out. The patient reported that SIMENTAL also invited him/her over to his residence to take drugs together, adding that he (SIMENTAL) had "women" at his residence, but the patient declined. (The patient understood SIMENTAL to be referring to a brothel-like arrangement at his residence, and also that the patient could take drugs at SIMENTAL's residence.)

b. Another SIMENTAL patient informed Kaiser staff that, during the patient's appointments, he/she would sell cocaine and steroids to SIMENTAL at a Kaiser parking lot, in exchange for SIMENTAL writing prescriptions to him/her and for \$500 per transaction.

c. In June 2017, Kaiser received a complaint from one of SIMENTAL's patients, J.M., that SIMENTAL had called him

at 4:44 a.m. stating that he (SIMENTAL) was dating his estranged wife of 15 years, B.M., who was also one of SIMENTAL's patients. J.M. provided Kaiser a screen shot of the call log on his cellular telephone documenting the call from SIMENTAL.

(SIMENTAL denied the allegation, stating among other things that he accidentally called J.M., and that he (SIMENTAL) only told J.M. that B.M. was renting a home from him.) SIMENTAL was ordered to submit to a drug screen as part of Kaiser's investigation into the incident as well as other reported issues, but the results of the screen were not included in the records we received (or were redacted).

d. The records also document instances in which SIMENTAL practiced while intoxicated, or in which SIMENTAL called into work requesting sick leave while apparently intoxicated. In 2013, a patient accused SIMENTAL of acting as though he was on drugs while treating her.

C. SIMENTAL's Prescribing to the Joslens

12. I have reviewed records for controlled drugs prescribed by SIMENTAL from the California Department of Justice's Controlled Substance Utilization Review and Evaluation System ("CURES") database. CURES tracks all controlled drugs at Schedules II through IV that are dispensed in California, including based on prescriptions filled at pharmacies, based on state law mandating all medical or pharmacy practitioners to submit accurate reports of such dispensation. (From speaking with Kaiser representatives, I have learned that, in order to prescribe a controlled substance, the prescribing Kaiser doctor

must enter a two-step authentication process into Kaiser's computer system, as a means to prevent any third party from issuing such prescriptions posing as the doctor.) The CURES records shows that SIMENTAL has a long history of prescribing narcotics and benzodiazepines to both of the Joslens:

a. Regarding B. Joslen, the CURES data shows that, between July 18, 2015, and May 18, 2018, SIMENTAL issued 28 prescriptions for 2-mg hydromorphone (a Schedule II narcotic), 23 prescriptions for 30-mg morphine (a Schedule II narcotic), and 11 prescriptions for temazepam (a Schedule IV benzodiazepine). For example, in March 2018, B. Joslen filled SIMENTAL prescriptions for all three drugs, and she again filled SIMENTAL prescriptions for hydromorphone in April and May 2018.

b. Regarding R. Joslen, the CURES data shows that, between October 30, 2015 and November 8, 2018, R. Joslen received 24 prescriptions for 10-mg hydrocodone, 18 prescriptions for 15-mg morphine, 11 prescriptions for 37.5-mg phentermine (a Schedule IV stimulant), and nine prescriptions of 5-mg zolpidem (a Schedule IV sedative commonly known by the brand name Ambien). For example, in April 2018, R. Joslen filled SIMENTAL prescriptions for hydrocodone, morphine, and phentermine, and the following month he filled another prescription for hydrocodone. Relevant to the prescription charged in the complaint requested herein, the CURES data shows that, on November 8, 2018, SIMENTAL prescribed 180 pills of 10-mg hydrocodone to R. Joslen.

13. Investigators interviewed a family member of the Joslens following B. Joslen's death, who stated that he/she overheard conversations indicating that the Joslens saw a doctor at Kaiser that they partied with, and who would give them whatever drugs they wanted. The family member had access to B. Joslen's iPad and was able to obtain copies of B. Joslen's communications with SIMENTAL via Kaiser's digital patient portal. The family member also believed that the Joslens were aware of compromising information about SIMENTAL, and were using the compromising information to extort SIMENTAL into writing controlled drug prescriptions for them. (In addition to reviewing the digital evidence provided by the family member, we later independently obtained SIMENTAL's Kaiser communications with the Joslens via a search warrant issued to Kaiser.) On reviewing the communications, I observed the following, among other things:

a. In an August 2, 2016 communication, B. Joslen expressed anger at SIMENTAL for accusing her of lying about her reason for wanting an early refill, saying, "I have many stories to tell about you and I am one angry woman that you accused of lying. Which I have not done. All you needed to do was act like a decent person Mike." (SIMENTAL's first name is Michael.) Ten minutes later, she added, "I want you to act like a man and face us. And try to be sober." Similarly, in a December 2017 communication, B. Joslen asked SIMENTAL for a refill and stated, "You did promise me once you wouldn't let me ever run out."

b. I also observed other communications reflecting that SIMENTAL was conscious about prescribing in a manner that avoided attention from federal and state enforcement authorities, and likewise corroborate that he knew B. Joslen suffered from addiction and that there was a risk she would overdose from the drugs he was prescribing. For example, in March 2017, B. Joslen informed SIMENTAL that she had to travel to San Antonio; she asked, "If I could pick up this RX Saturday that would be awesome, however if that's an issue with my points, I can get it after midnight Sunday morning (day 30) to appease the Feds." SIMENTAL responded, "I filled it today. It[']s actually the Department of Justice/Drug Enforcement Agency who is monitoring prescriptions and refill activities. So PACE yourself and monitor your refill dates so you are safe from overdose." As a further example, I observed another communication from January 2017 in which SIMENTAL told B. Joslen that she must submit to a face-to-face examination and urine screening every six months, noting that they are "basic requirements" under "state laws that we have spoken about many times" and adding, "I don't make these laws but the government does and enforces them." As noted, SIMENTAL was previously disciplined for overprescribing narcotics and benzodiazepines, and he remains under active MBC probation through December 2018. I submit that the above communications show that SIMENTAL was exercising caution in catering to the Joslens' demands for controlled drugs, because he knew that he was being monitored

and did not want to get caught again, including for causing them to overdose.

c. The communications also show that on June 11, 2018, around two weeks prior to her death, B. Joslen emailed SIMENTAL asking to get a refill of her prescription. The communications reference that SIMENTAL "is out of the office for the next 2 weeks." (I now know that SIMENTAL was undergoing residential treatment for alcohol abuse at the time.) CURES records for B. Joslen verifies that on June 18, 2018 she filled a prescription for hydromorphone, and that on June 25, 2018 (three days prior to her death) she filled prescriptions for 60-mg morphine and 30-mg temazepam; the CURES data shows other practitioners as the prescribers for the reasons noted.

14. The family member of the Joslens discussed above also informed investigators that R. Joslen was continuing to obtain prescriptions in B. Joslen's name from Kaiser after her death. (The family member stated that he/she went onto B. Joslen's iPad and changed the password for the Kaiser application to prevent R. Joslen from continuing to do so.) CURES data for B. Joslen corroborates this information: Kaiser Permanente dispensed morphine and hydromorphone to B. Joslen in July 2018 and August 2018, both after her June 2018 death, albeit via prescriptions issued by other doctors for the reasons noted.

15. I also know that SIMENTAL communicated with the Joslens via his personal cellphone. We subpoenaed toll information for SIMENTAL's personal cellphone number (which is subscribed in his name), for the approximate time period of

April 2018 through September 2018. The toll information shows seven instances in which SIMENTAL communicated with R. Joslen's personal cellphone number (subscribed in his name), including as recently as June 20, 2018. Notably, at least four of the communications occurred at night, between 8:35 p.m. and 10:08 p.m., which I submit corroborates that SIMENTAL and the Joslens had more than an ordinary doctor-patient relationship. Additionally, in a July 2016 communication sent over the Kaiser portal, B. Joslen referred to such communications, including that SIMENTAL was communicating with other patients via his personal cellphone: "If you don't want patients using your personal phone, that's fine, just ask. But stop giving out your number then as if it's alright to use."

16. Additionally, we seized the cellphones belonging to both SIMENTAL and R. Joslen on executing the November 2018 federal search warrants at their respective residences. From searching the phones, we have observed the following, among other things:

a. On April 8, 2016, SIMENTAL wrote to R. Joslen, "The state of California has a New CURES system 2.0 implemented 2016 tracking you and Bonnie." (This communication occurred around a week before SIMENTAL settled the MBC disciplinary action against him, under which SIMENTAL's medical license was subjected to a term of probation that included mandatory tracking of his controlled drug prescriptions.)

b. I observed a series of messages between SIMENTAL and the Joslens over the following week that I believe pertain

to responding to this new "tracking" system. For example, I observed text messages between SIMENTAL and B. Joslen that same day (April 8, 2016), that, I submit, also show SIMENTAL had knowledge that the Joslens were abusing each other's drugs:

SIMENTAL: Bottom line by July 1st you will have to be 11% lower without using Robs Norco as they are also linked to address!

B. JOSLEN: Well, he has to stop taking my prescriptions also. One of us will have to go without so we can get to where we just have our own.

SIMENTAL: That will put you at the limit as long as you don't need more and need early refills. 2800 Dilaudid and 800 morphine tablets per year is considered excessive prescribing in 2016. In 2009 we could prescribe double that of indicated.

B. JOSLEN: I can cut back as long as it's not too sudden and drastic.

SIMENTAL: 5 tipped bottles open very significant. The multiple addictive drugs. The database has a 5 next to your name. Phentermine would change it to a 6 and things would worsen. Understand.

c. I also observed messages between SIMENTAL and R. Joslen on April 16, 2016, which I further submit shows that SIMENTAL was aware he was prescribing excessive volumes of opiate drugs to the Joslens:

SIMENTAL: Rob I got alerts on you and Bonnie from the Department of Justice.

R. JOSLEN: How am I over, is it the address part???

SIMENTAL: Yes same address. (I believe this refers to the fact that the Joslens share the same residential address)

R. JOSLEN: So my numbers aren't really over, right???

SIMENTAL: Your over the 50 mg morphine level. 68. Bonnie is at 122.

D. November 2018 Interviews

17. On executing the November 2018 search warrants at the residences of SIMENTAL and R. Joslen, each of them submitted to interviews. Additionally, R. Joslen submitted to additional interviews thereafter, including an interview at a DEA Riverside office on November 19, 2018.

18. During the interview, R. Joslen stated, among other things, the following:

a. R. Joslen has been seeing SIMENTAL as a patient for approximately twelve years, but perhaps longer. R. Joslen received spinal surgery in 2002 and was referred to SIMENTAL as a primary care physician sometime after that, by a law enforcement officer that told R. Joslen SIMENTAL likes treating cops. On first taking on R. Joslen as a patient, SIMENTAL ran initial physical assessments and tests of R. Joslen when SIMENTAL began treating him. R. Joslen began seeing SIMENTAL in around 2005. SIMENTAL started weening them off of previous controlled substance prescriptions, which R. Joslen believed may have been because of changes in laws regarding controlled substance prescribing. Ultimately, the Joslens became addicted to opiates from the prescriptions issued by SIMENTAL. SIMENTAL would prescribe them whatever drugs they wanted, and SIMENTAL knew that they would share the drugs with each other when one of them ran out.

b. R. Joslen went to SIMENTAL's house on multiple occasions socially (e.g., birthday parties or for dinner), and went shooting with SIMENTAL once. R. Joslen also went to

SIMENTAL's house a couple of times while R. Joslen was on duty (he is a retired Riverside County Sheriff Department deputy), during which some of the visits SIMENTAL gave him prescriptions and/or a doctor's note to excuse R. Joslen from being absent from work. According to R. Joslen, prior to the CURES system, he was getting three prescriptions for 300 pills of Norco (hydrocodone) per month, for a total of 900 pills per month. SIMENTAL was also prescribing 900 Norco pills per month to B. Joslen following a 2008 injury.

c. R. Joslen knew that he and SIMENTAL did not have a typical doctor-patient relationship. According to R. Joslen, B. Joslen spent approximately 80 percent of the previous two to three years at home in bed, but would leave to go to her medical appointments. R. Joslen indicated SIMENTAL never referred B. Joslen to a specialist or for alternative treatment. SIMENTAL learned B. Joslen died approximately two to three months after her overdose, but did not show interest in the cause of death. R. Joslen admitted to filling B. Joslen's prescriptions for pain medication twice after her death using her Kaiser Permanente online portal logins.

d. R. Joslen admitted that he was filling prescriptions in B. Joslen's name after her death, by logging into B. Joslen's Kaiser account and requesting refills.

19. SIMENTAL stated, among other things, the following: SIMENTAL has been a family practice doctor at Kaiser since 2002. SIMENTAL denied socializing with the Joslens other than a couple occasions. SIMENTAL would personally examine the Joslens once

every six months, which was a Kaiser requirement for patients being prescribed controlled substances. SIMENTAL could not remember ever being told that they were sharing their drugs with each other, and he denied ever being threatened by them. SIMENTAL said he was trying to reduce their medication levels, and that they would occasionally consult with pain doctors.

E. Expert Review of SIMENTAL's CURES Data and Patient Records for the Joslens

20. We retained the services of Dr. Rich Chavez to independently review, among other things, CURES data for SIMENTAL's prescriptions for the approximate date range of November 2015 through November 2018, and also to review patient records for the Joslens that we obtained from Kaiser via subpoena. Dr. Chavez produced a written report dated January 19, 2019, documenting his findings. Dr. Chavez is Medical Director of the P.A.I.N. Institute (Pain and Addiction Integrated Network) in Redondo Beach, California. He received his medical degree from UCLA School of Medicine and is board certified in pain medicine, addiction medicine, and family medicine, and holds a diplomate from the American Academy of Integrative Pain Management. Dr. Chavez's findings regarding the Joslens included the following:

a. Dr. Chavez identified an array of anomalies in the SIMENTAL's prescribing to the Joslens, such as three dozen instances of multi-month gaps in prescribing narcotics and other controlled medications to them, which should not have occurred in the legitimate practice of medicine. Additionally, B. Joslen

"often had insufficient MORPHINE and HYDROMORPHONE and therefore would've been placed in danger of overdose at refill. She had excessive amounts of TEMAZEPAM and may have used more sedatives when she ran short of opiates, and this would have put her at risk for accidental overdose as well." Dr. Chavez reached similar findings as to R. Joslen regarding multiple categories of drugs.

b. Regarding the Joslens' patient records, Dr. Chavez concluded that "neither chart had sufficient information . . . to be considered acceptable. While there were copies of some lab, a few urine drug screens noted, typical post wound and healing recommendations, occasional x-ray readings, occasional urgent care visits, fracture care, and copies of immunizations. There was no information to justify prescribing of controlled medications." Thus, "both charts were inadequate in explaining the utilization of opiate drugs," and "both charts in conjunction with the CURES records of controlled medications did not describe why these drugs were necessary, nor did either chart provide rational and reasonable information regarding the clinic benefit obtained by the use of the medications." Rather, the "records were filled with confusing data and information provided that made absolutely no sense."

c. Dr. Chavez thus concluded that SIMENTAL's prescribing "cannot be considered to be appropriate or legitimate in the usual course of community and professional practice," and that SIMENTAL placed both of the Joslens at

serious risk of overdose through his prescribing patterns and deficiencies in medical treatment.

F. Evidence of SIMENTAL's Broader Misconduct

21. I believe that SIMENTAL was unlawfully prescribing controlled drugs not only to the Joslens, but to other patients as well, consistent with SIMENTAL's disciplinary history discussed above. CURES data for SIMENTAL shows he has written at least 7,582 controlled drug prescriptions during the approximate time period of October 9, 2015 to December 24, 2018. Notably, 2,939 of those prescriptions (nearly 40%) are for the narcotic hydrocodone, often at maximum 10-mg strength. The CURES data shows large volumes of prescribing other Schedule II narcotics including hydromorphone, morphine, and oxycodone, and of Schedule IV benzodiazepines such as alprazolam (Xanax), clonazepam (Klonopin), diazepam (Valium), lorazepam (Ativan), and temazepam. (As noted above, SIMENTAL is a family practitioner with no known board certification or specialization in either pain medicine or psychiatry.)

22. As noted, we also provided Dr. Chavez CURES data for all of SIMENTAL's prescribing for the date range November 2015 through November 2018, which included prescriptions to patients other than the Joslens. In his review of the CURES data, Dr. Chavez identified 100 patients receiving potentially unlawful controlled drug prescriptions meriting further evaluation of the respective patients' medical files to determine if the prescriptions were written for legitimate medical purposes in the usual course of professional practice.

23. From my review of evidence seized from SIMENTAL's residence, among other things, I believe that SIMENTAL has been prescribing controlled drugs to patients as part of establishing mutually beneficial relationships involving personal favors, business partnerships, or general social exchanges. For example, I observed among other things:

a. During the November 2018 search of SIMENTAL's residence and office, we found multiple small papers (resembling hospital patient tags) each bearing the name of one of SIMENTAL's patients, along with a handwritten notation of the patient's associated professional service, based on which we believe that SIMENTAL engages in quid pro quo relationships with multiple patients. For example, one note bore the name of a patient and, in handwriting, the name of a tequila company, and cases of the tequila were found in the residence; from speaking with SIMENTAL during the search, we believe that SIMENTAL is an investor in the company. Other examples are notes that identified SIMENTAL's patients as working in plumbing, garage door installation, motorcycle parts and repair, an apparent wholesale car dealership, and concrete installation.

b. Similarly, we believe that SIMENTAL was prescribing to at least one patient, C.K. with whom he was maintaining a sexual relationship, based on intimate photographs of C.K. found on SIMEETNAL's phone. For example, on April 20, 2016, C.K. sent a text message to SIMEETNAL: "Morning. Please Mikey, just write me a 30 days prescription and then we can s he [sic] file an appointment". SIMENTAL responded, "What

pharmacy". C.K. replied, "Brea". SIMENTAL then writes, "I just did it". A review of SIMENTAL's CURES data shows that on April 20, 2016, SIMENTAL prescribed C.K. the Schedule IV stimulant phentermine.

24. Additionally, I submit that SIMENTAL's conduct shortly after we executed the search warrant at his residence in November 2018 likewise corroborates that he has been practicing medicine while impaired, which I submit further evidencing that he has been prescribing controlled outside the usual course of professional practice and without a legitimate medical purpose.

a. Specifically, on November 24, 2018, the Corona Police Department ("CPD") responded to reports of unusual activity at SIMENTAL's residence. When they arrived, they found SIMENTAL outside his home and unclothed. Prior to their arrival, SIMENTAL had been burning unknown papers in his residence, and he SIMENTAL had broken his leg from jumping off a neighbor's garbage. The officers took SIMENTAL into custody under California Welfare and Institutions Code Section 5150, during which SIMENTAL told the officers that he is a sniper, that he had firearms hidden in an unspecified location, and that he planned to use them to shoot members of the public. CPD officers searched SIMENTAL's residence and seized forty seven firearms, all registered to him; three firearms registered to SIMENTAL were not found in the residence, and California investigators are continuing to attempt to locate them.

b. SIMENTAL was brought to the emergency room at Corona Regional Hospital, where he was shown to have a fractured

leg and second degree burns on his left hand. Records of the emergency intake show that SIMENTAL at first denied using methamphetamine, but later said that he had taken methamphetamine and then tried to set his house on fire. (However, a drug screen did not show the presence of amphetamines.)

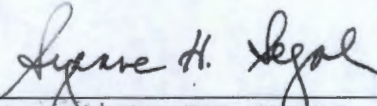
V. CONCLUSION

25. For all the reasons described above, I submit there is probable cause to believe that SIMENTAL has committed a violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(C) (distribution of hydrocodone).

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Jessica Lohner, Special Agent
Drug Enforcement
Administration

Subscribed to and sworn before me
this 19 day of February, 2019.



UNITED STATES MAGISTRATE JUDGE
SUZANNE H. SEGAL