

**FOR IMMEDIATE RELEASE:**  
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## **AG Balderas Charges Albuquerque Nurse Practitioner Alleged to Have Caused the Death of Three Patients by Overprescribing Opioids**

*Albuquerque, NM*—Today, Attorney General Hector Balderas filed charges against Andrei V. Marchenko on nine felony charges including Medicaid Fraud Resulting in Death, Involuntary Manslaughter, Medicaid Fraud Resulting in Physical Harm and Medicaid Fraud in Excess of \$2,500. The Defendant allegedly defrauded the State's Medicaid program and overprescribed opioids to his patients, which ultimately led to three deaths and two overdoses.

“The opioid epidemic continues to ravage our communities and devastate New Mexican families,” said Attorney General Balderas. “My office will continue to use all of our resources to aggressively bring prevention efforts and targeted prosecutions to our communities that are in desperate need of healing.”

This case was investigated and will be prosecuted by the Office of the Attorney General's Medicaid Fraud Control Division and is part of Attorney General Balderas' Project OPEN, which focuses on targeted prosecutions, civil enforcement efforts, and preventative training to combat the opioid crisis in New Mexico.

A copy of the complaint is attached.

###

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL METROPOLITAN COURT

v.

No. MP19-4208

ANDREI MARCHENKO

ADD: 11405 Eagle Rock Ave NE  
Albuquerque, NM 87122

DOB: [REDACTED] 1960

SSN: [REDACTED]

**CRIMINAL COMPLAINT AND REQUEST FOR SUMMONS**

**CRIME(S):** Medicaid Fraud Resulting in Death, Involuntary Manslaughter, Medicaid Fraud Resulting in Physical Harm, Medicaid Fraud in excess of \$2,500

**Count(s)**

1. Andrei Marchenko did commit Medicaid fraud and that Medicaid fraud resulted in death to a recipient – **Patient #1 M.G.**, a second degree felony, contrary to Section 30-44-7(F) (6154) NMSA 1978.

**Or in the Alternative to Count 1:**

Andrei Marchenko did cause the death of **Patient #1 M.G.**, by an act committed with a total disregard or indifference for the safety of others, and the act was such that an ordinary person would anticipate that death might occur under the circumstances, a fourth degree felony, contrary to NMSA 1978, Section 30-2-3(B)(0006) NMSA (1994).

2. Andrei Marchenko did commit Medicaid fraud and that Medicaid fraud resulted in death to a recipient – **Patient #3 J.B.A.**, a second degree felony, contrary to Section 30-44-7(F) (6154) NMSA 1978.

**Or in the Alternative to Count 2:**

Andrei Marchenko did cause the death of **Patient #3 J.B.A.**, by an act committed with a total disregard or indifference for the safety of others, and the act was such that an ordinary person would anticipate that death might occur under the circumstances, a fourth degree felony, contrary to NMSA 1978, Section 30-2-3(B)(0006) NMSA (1994).

3. Andrei Marchenko did commit Medicaid fraud and that Medicaid fraud resulted in death to a recipient – **Patient #4 R.N.Y.**, a second degree felony, contrary to Section 30-44-7(F) (6154) NMSA 1978.

**4. Or in the Alternative to Count 3:**

Andrei Marchenko did cause the death of **Patient #4 R.N.Y.**, by an act committed with a total disregard or indifference for the safety of others, and the act was such that an ordinary person would anticipate that death might occur under the circumstances, a fourth degree felony, contrary to NMSA 1978, Section 30-2-3(B)(0006) NMSA (1994).

5. Andrei Marchenko did commit Medicaid fraud and that Medicaid fraud resulted in the physical harm or psychological harm to a recipient – **Patient #2 J.B.**, a fourth degree

felony, contrary to Section 30-44-7(D) (6146) NMSA 1978.

6. Andrei Marchenko did commit Medicaid fraud and that Medicaid fraud resulted in the physical harm or psychological harm to a recipient – **Patient #2 J.B.**, a fourth degree felony, contrary to Section 30-44-7(D) (6146) NMSA 1978.
7. Andrei Marchenko did provide, with intent that a claim be relied upon for the expenditure of public money, treatment, treatment that was substantially inadequate when compared to generally recognized standards within the discipline or industry and the value of the benefit, treatment, services or goods improperly provided was \$7,570.47, a third degree felony, contrary to Section 30-44-07(A2) (2335) NMSA 1978.

The undersigned, under penalty of perjury, complains and says that between the dates of March 20, 2015 and March 30, 2017, in the County of Bernalillo, State of New Mexico, the above-named defendant(s) did:

**Background:**

The Medicaid Fraud Control Division of the New Mexico Office of the Attorney General is a Medicaid Fraud Control Unit, authorized pursuant to 42 CFR § 1007.11 (a) to “conduct a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.”

Pursuant to Title XIX of the Social Security Act, the Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The federal and state governments jointly fund and administer the Medicaid program. A state plan is a contract between a state and the federal government describing how that state administers its Medicaid program. It gives an assurance that a state abides by federal rules and may claim federal matching funds for its Medicaid program activities. The state plan sets out groups of individuals to be covered, services to be provided, methodologies for providers to be reimbursed and the administrative requirements that states must meet to participate. In New Mexico, the Human Services Department, Medical Assistance Division (MAD or the State Agency), is responsible for administering the Medicaid program.

A Managed Care Organization (MCO) is an insurance company that contracts with providers and medical facilities to provide healthcare services to its members. Centennial Care is the name of the NM Medicaid program. At the time of the referral, there were four MCO's offering Centennial coverage in New Mexico, they are Blue Cross Blue Shield of NM, Molina Health Care of NM, Inc., Presbyterian Health Plan, Inc., and United Health Care Community Plan of NM. The services to be provided to the enrolled Medicaid members include physical health, personal care service, behavioral health, long term care and community benefits. Most people who are eligible for NM Medicaid will get their services through one of these Centennial Care MCO's.

A provider must maintain all the records necessary to fully disclose the nature, quality, amount

and medical necessity of services furnished to an eligible recipient who is currently receiving or who has received services in the past [42 CFR 431.107(b)]. Services billed to MAD not substantiated in the eligible recipient's records are subject to recoupment. Failure to maintain records for the required time period is a violation of the Medicaid Provider Act, NMSA 1978 section 27-11-1, et. seq., and a crime punishable under the Medicaid Fraud Act, NMSA, section 30-44-5. See 8.351.2 NMAC, Sanctions and Remedies. (8.302.1.17 NMAC).

Each patient treatment session or appointment conducted with a patient/client or Medicaid recipient requires a patient chart or progress note to document the date, time, patient (name and identifiers), treatment plan, steps taken to reach set goals, and the status of the patient at the time of the appointment or session. A patient chart, progress note or similar document is required to bill the State of New Mexico Medicaid program, verifying the service has been rendered. The bill to the State of New Mexico is commonly referred to as a claim. Each individual service is a separate claim. It is the responsibility of the provider to maintain the records for six (6) years.

### **Investigation:**

The Medicaid Fraud Control Division received this referral on April 4, 2017, from the Drug Enforcement Administration. The referral allegations were described as follows:

On April 4, 2017, at approximately 1516 hours, the New Mexico Office of the Attorney General received correspondence from the Drug Enforcement Administration (DEA) requesting assistance with a case they were investigating. DEA advised the case involved a Certified Nurse Practitioner (CNP) by the name of Andrei Marchenko. DEA received information from several sources indicating CNP Marchenko prescribes large doses of controlled substances without legitimate medical purpose and outside of the scope of commonly accepted medical practices. DEA believes additional criminal charges of healthcare fraud (Medicaid Fraud) and drug distribution resulting in death may be applicable. DEA also believes several of CNP Marchenko's patients are Medicaid recipients.

On May 4, 2017, at approximately 1330 hours, Special Agent in Charge S. Baca and Medical Investigator C. Stafford met with agents at the Albuquerque office of the Drug Enforcement Administration. At this time they were briefed on the case and the information that was discovered during their investigation. All DEA reports were provided to our office for review and to utilize for further investigation.

DEA stated that on April 27, 2017, CNP Marchenko had voluntarily surrendered his privileges for prescribing controlled substances. This was done due to the DEA alleging CNP Marchenko failed to comply with the Federal requirements pertaining to controlled substances. DEA advised that their case investigation was complete and referred the case to the New Mexico Office of the Attorney General to pursue further crimes involving Medicaid Fraud. DEA de-conflicted the case and turned over all pertinent information gathered by their agency.

In reviewing the DEA reports, five former patients of CNP Marchenko were identified for further

investigative action for various reasons. All five patients were confirmed to be Medicaid recipients in the State of New Mexico.

- **Patient #1 M.G.**

M.G. began her treatment with CNP Marchenko on October 31, 2016. According to M.G.'s patient paperwork, the medical problems she indicated having were headaches, migraines, depression, fibromyalgia, and sleep problems. M.G. said she was involved in a rear end motor vehicle crash that hurt her neck and back. She did not say when this crash happened but stated she experiences pain on a regular basis. She indicated her current medications were oxycodone and alprazolam. M.G. notated the quantity of her medication but not the dose or frequency. M.G. stated she was experiencing a pain level of 8/10 on this visit. M.G. stated she has experienced loss of weight, no appetite, and sleeping problems. M.G. also explained she had been having seizures due to running out of alprazolam and has had ten seizures in the past ten years. There is no documentation in the patient file that these problems were followed up with by CNP Marchenko.

The body system assessment (subjective information from the patient) mentioned the weight loss and poor appetite but the entry then states "no weight loss or appetite changes." This entry contradicts the information collected during the assessment. The physical examination states M.G.'s weight was 98 pounds with a Body Mass Index (BMI) of 17.9. The musculoskeletal assessment does not report any symptoms or findings that would support the chief complaint of the pain M.G. stated she was experiencing. The cardiac review lists seizures and the psychological review reflects that the patient has no excessive anxiety or excessive use of drugs. There is no detailed documentation regarding M.G. being in counseling for psychological issues or any treatment or diagnosis from a previous provider regarding her psychological health. There is no documentation regarding M.G.'s use of alprazolam and oxycodone and the risks associated with taking these medications in combination. There was not a urinalysis test administered and no evidence that a Prescription Monitoring Program (PMP) report was obtained on this visit.

The Prescription Monitoring Program (PMP) is a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data is used to support efforts in education, research, enforcement and abuse prevention. The PMP requirements state, before an advanced practice nurse prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

According to the PMP our Office obtained during the investigation, CNP Marchenko began prescribing alprazolam and oxycodone on this visit. To be noted, there is no documentation in the file that would indicate a PMP was run on this visit prior to CNP Marchenko prescribing to M.G.

On November 21, 2016, it was notated in M.G.'s patient file that a request for MRI records for the lumbar spine was sent to Lovelace Hospital. On the same day, Lovelace responded that M.G. did not have any records in radiology for the spine for the past two years. There is no documentation that CNP Marchenko followed up with this matter.

There was a PMP in the patient file that was ran on November 24, 2016, four days prior to M.G.'s second office visit with CNP Marchenko on November 28, 2016. The date range for the PMP was for the past year (11/24/2015 through 11/24/2016) and only two pages of four were present in the patient file. This PMP shows thirty one prescriptions written during this date range to include oxycodone, Hydrocodone, and alprazolam. The report reflects four different prescribers and prescriptions filled at four different pharmacies. There is no documentation present in the patient file that addresses what the PMP report reflected. On this visit M.G.'s chief complaint was fibromyalgia, scoliosis, two herniated discs, and anxiety. M.G. described her pain level at 8/10 and anxiety level at 10/10. M.G. also advised she had a seizure on November 15/16. It's unknown if M.G. meant she had a seizure on both days or didn't remember the exact date. This information is what was reflected in the notes but the exact date was not clarified. There is also no documentation as to why M.G. was having seizures and if any treatment was sought and/or where. The notes also stated that M.G. was there to establish as a patient of CNP Marchenko's as well as pain management treatment. To be noted, M.G. was established with CNP Marchenko on her first visit on October 31, 2016. The majority of the information regarding this visit were identical to the information notated for the visit that took place on October 31, 2016. The physical examination states M.G.'s weight was 100.4 pounds with a (BMI) of 18.4. The assessment/plan stated M.G. will get an x-ray of the lumbar spine. There was no order, documentation, or results for this x-ray in the medical record. A claim was submitted to Medicaid for a urinalysis test but no documentation or results for this test were in the medical file. According to the PMP, CNP Marchenko prescribed alprazolam and oxycodone on this visit and both prescriptions were filled on November 29, 2016.

According to the Office of the Medical Investigator (OMI) report, M.G. was found unresponsive in her home as a result of a possible opioid overdose on December 23, 2016, approximately one month after her last visit with CNP Marchenko. M.G. was administered Narcan and transported to the University of New Mexico Hospital. M.G. was placed on a ventilator and her family withdrew care on December 27, 2016, and she was pronounced deceased at that time. The cause of death on the OMI report stated "Toxic effects of multiple drugs (heroin, oxycodone, and methamphetamine.)"

In reviewing M.G.'s PMP it stated that CNP Marchenko prescribed the same medication (Alprazolam and oxycodone) on four occasions after M.G. was deceased.

- Alprazolam and oxycodone on January 5, 2017
- Alprazolam and oxycodone on February 2, 2017
- Alprazolam and oxycodone on March 2, 2017
- Alprazolam and oxycodone on March 30, 2017

On January 5, 2017, a third office visit is documented in the medical file. This visit took place after M.G. was confirmed deceased. The chief complaint notated by this individual was fibromyalgia, scoliosis, two herniated discs, as well as anxiety. Pain level was said to be 6/10 and anxiety level 7.5/10. The physical examination states M.G.'s weight was 110.2 pounds with a (BMI) of 20.2. This record reflects a ten pound weight gain from M.G.'s last visit with CNP Marchenko (approximately 38 days). There is no documentation in the medical record that this was addressed. With the exception of the changes in the chief complaint and physical examination, all other information is identical to the previous office visit that took place on November 28, 2016. There was no urinalysis test ordered or results in the medical file. According to the PMP, prescriptions for alprazolam and oxycodone were provided by CNP Marchenko and were filled on January 6, 2017. A Medicaid claim was submitted for this office visit utilizing M.G.'s Medicaid client ID number.

On February 2, 2017, a fourth office visit was outlined in the medical file. Again, this office visit took place after M.G.'s date of death. The chief complaint notated by this individual was mid to lower back pain radiating down left leg with a pain level of 8/10. The physical examination states weight was 106.2 pounds with a (BMI) of 19.4. Once again there is no documentation about the weight fluctuation or if it was addressed by CNP Marchenko. With the exception of the changes in the chief complaint, physical examination, and assessment/plan, all other information is identical to the previous office visit that took place on January 5, 2017. Assessment/plan stated prescriptions for alprazolam and oxycodone with instructions not to fill until February 3, 2017. It also stated a urinalysis screening was done in the office and a urine sample will be sent for confirmation to "Next Health Laboratory." No records for this test were in the medical file and no Medicaid claims were submitted for the test or "Next Health Laboratory." Per M.G.'s PMP, the prescriptions written by CNP Marchenko on the day of this office visit were filled on February 2, 2017.

On March 2, 2017, a fifth office visit was documented in the medical file. The assessment/plan notated that the patient will bring all radiology reports next visit. With the exception of the assessment/plan, all other information is identical to the visit that took place on February 2, 2017. Per M.G.'s PMP, prescriptions for alprazolam and oxycodone were prescribed by CNP Marchenko and both were filled on March 2, 2017.

On March 30, 2017, a sixth office visit was outlined in the medical file. The chief complaint on this day was mid to lower back pain that radiates down to left leg. Pain level was notated at 7/10. The physical examination reflected weight at 112 pounds with a BMI of 20.5. With the exception of the change in weight and pain scale, all other documentation was identical to the office visit that took place on March 2, 2017. Per M.G.'s PMP, prescriptions for alprazolam and oxycodone were written by CNP Marchenko on this visit and both were filled on the same day.

The DEA report stated on April 27, 2017, they executed a search warrant at CNP Marchenko's practice located at 10401 Montgomery Pkwy NE in Albuquerque, NM. While executing the warrant agents were notified that a patient was scheduled to arrive that uses the name M.G. Agents had prior knowledge that M.G. was deceased. The female arrived shortly thereafter and

identified herself as M.G. as she checked in at the front desk. Agents then identified themselves to the female and asked her to follow them to a back office to talk to her. The female was cooperative and proceeded to the office. Agents asked the female for her driver's license, to which she replied that she did not have one but admitted her name is actually T.G. T.G. told agents she was using her deceased sister's identity to obtain pain pills from CNP Marchenko. The report states CNP Marchenko was asked into the room to confirm that T.G. was the female that he was treating for pain and he was prescribing under the name of M.G. CNP Marchenko confirmed this to be true.

The Medicaid claims for M.G. were analyzed and a claim for an office visit with CNP Marchenko on January 5, 2017, was submitted and later paid by Medicaid. This claim is notated in the Medicaid data as an office visit with CNP Marchenko as the rendering provider. This claim also coincides with the patient file where the office visit is documented on this day. There were no other claims for any office visits after January 5, 2017, however there was one additional prescription claim that was submitted by Walgreens on March 30, 2017. This claim stated it was for oxycodone prescribed by CNP Marchenko. This claim was later denied payment. This prescription was notated on the PMP and the office visit was documented in the patient file.

- **Patient #2 J.B.**

J.B. began his treatment with CNP Marchenko on March 20, 2015. On this day, J.B. filled out new patient paperwork and the purpose of this appointment was to establish care with CNP Marchenko. J.B.'s chief complaint was weakness of the right arm, loss of sensitivity in right hand, and lower back pain. J.B. stated his current medications were oxycodone and alprazolam. J.B. also indicated that he suffered from mental illness and depression. J.B. advised of history of right hand pain and was diagnosed with radial nerve palsy in 2011 when he suffered a stroke. J.B. said he had also been shot in the abdomen three times in 2007 and bullet fragments still remain in the area. J.B. indicated he was diagnosed with PTSD from this shooting incident in 2007 and is currently seeing a counselor for psychological issues. J.B. stated he had hernia surgery on March 12, 2015, and wanted the incision site checked to make sure it was healing correctly.

The body systems assessment (subjective information from the patient) did not reveal any pertinent complaints of abdominal pain, joint pain, difficulty walking, or stiffness. The physical examination reflects normal findings with the exception of the tenderness in the lumbar area and decreased sensation and grasp in the right hand. There is no documentation of assessment on the hernia site. A PMP report was ran on this visit with a time frame of the prior year (3/20/2014 through 3/20/2015.) This PMP report was 20 pages in length and indicated J.B. had a total of 41 prescriptions, six prescribers, and prescriptions filled at seven different pharmacies during the time frame queried. The PMP also stated J.B. received prescriptions for oxycodone and alprazolam from a different provider on March 2nd and 12th of 2015. There is no documentation that the risk associated with the use of alprazolam and opioid medication in combination was discussed with J.B. or if the PMP report findings were addressed. There were no referrals for follow up with the abdominal pain or back/spine pain J.B. complained of having and no documentation of x-ray or diagnostic examination requested. There is no documentation in the medical file regarding J.B.'s mental health status or who he was currently under the care of for



the psychological issues he stated having. The assessment/plan states J.B. signed a controlled substance agreement on this day and was prescribed oxycodone and alprazolam. It also noted that there was no urinalysis test completed at this time. The PMP shows that CNP Marchenko did in fact prescribe oxycodone and alprazolam on this visit, both were filled on the same day.

On April 17, 2015, a second office visit was documented in the medical file. The day prior CNP Marchenko ran a PMP report with a time frame of 04/16/2014 through 04/16/2015. This report was dated April 17, 2015, and only two of the eight pages were present in the medical file. There is an illegible initial and date (4/17/15) on the bottom of these two pages. The PMP reflects multiple prescriptions for alprazolam and oxycodone. The most recent prescriptions are the two written by CNP Marchenko on March 20, 2015, for alprazolam and oxycodone. There is also one prescription written on March 23, 2015, by a different provider for oxycodone, three days after his last appointment with CNP Marchenko. An additional prescription was written on March 24, 2015, by a different provider for alprazolam four days after his last appointment with CNP Marchenko.

There is no documentation in the medical file that the PMP findings were discussed with J.B. The chief complaint for this visit stated patient is here for a refill and complaint of back pain and hernia pain at a 4/10. Information from the previous visit indicates J.B. would have been 30 days post-operation at the time of this appointment. J.B. also complained of legs, hands, and feet getting swollen which started two weeks prior and has been feeling fatigued. The physical examination stated J.B.'s weight was 230 pounds with a BMI of 16.7. Additional notes in the file were the same as documented on March 25, 2015. A urinalysis test was administered on this visit which resulted in a positive reading for marijuana, methadone, and methamphetamine. No discussion was documented as to the findings of the urinalysis test and there is no additional third party lab results in the medical file confirming the findings of the initial test that was administered in CNP Marchenko's office. The PMP states CNP Marchenko wrote a prescription for oxycodone and alprazolam on this visit, both were filled on the same day.

In the medical file there was an authorization to release information to J.B.'s Probation Officer, it was signed and dated December 30, 2015. A fax confirmation indicating eleven pages were sent to "US District Court Federal Probation" on January 14, 2016, at 1253 hours.

On October 21, 2016, a third office visit was documented in the medical file. J.B.'s last visit with CNP Marchenko was approximately one and a half years prior (4/17/2015.) The chief complaint, history of present illness, review of systems, and personal history remained the same as the visit that took place on April 17, 2015. The physical examination stated J.B.'s weight was 240 pounds with a BMI of 17.6. The notes stated J.B. was administered a urinalysis test during this office visit, which showed positive results for buprenorphine (an opioid medication used to treat opioid addiction,) which was not prescribed. Also, the test resulted in a urine creatinine level that was outside of what is considered a normal range for urine. Stated on the results, it read that normal urine creatinine level is 20-300mg/dL, if reading is greater than 300mg/dL to consider clinical investigation. This test result form stated that it was printed on April 28, 2017, and there is no documentation that these test results were discussed with J.B. at the time of this visit. No PMP

report is in the medical file, however J.B. was prescribed oxycodone and alprazolam during this office visit. PMP reports reviewed later confirmed these prescriptions were written by CNP Marchenko. The prescription for oxycodone was written on September 3, 2016, and filled on October 21, 2016. The prescription for alprazolam was written on October 21, 2016, and filled on the same day. It is not documented in the file as to why the prescription for oxycodone was written in September and not filled until October. The dates for this particular prescription were confirmed on the PMP as well as the pharmacy records. There is no documentation present in the file that addresses the length of time between visits or if there were any conflicts with the medication CNP Marchenko was prescribing and J.B.'s probation status.

On March 21, 2017, a fourth office visit was documented in the medical file. The chief complaint on this day was a swollen bilateral leg, arm, hand, and feet pain. Patient stated he would also like a thyroid check due to weight gain and to check if he has "diabetes mellitus" (DM.) The physical examination stated weight was at 255.8 pounds with a BMI of 187.7 (BMI appears to be a typographical error), all other information for physical examination is the same as documented on October 21, 2016. There is no documented discussion about the weight gain (15.8 pounds since last visit) and no laboratory results for a possible thyroid check or tests that would address the question of J.B. possibly having DM. A urinalysis test was administered and the results were positive for buprenorphine which J.B. has no record of having a prescription for. No pain level is assessed during this visit. The review of systems reflects no intended weight change or low or high energy level. The assessment/plan stated prescriptions were given to J.B. for Losartan (often prescribed for high blood pressure or kidney disease,) Wellbutrin (often prescribed as an antidepressant or for smoking cessation,) alprazolam, and oxycodone. There is no documentation as to why Wellbutrin and Losartan were prescribed.

Within the files that the DEA provided were documents outlining J.B.'s federal probation status and his probation officer's case notes. J.B.'s probation officer's name is Erick Newton. P.O. Newton completed a violation report on March 23, 2017, outlining acts of previous non-compliance and a current non-compliance by J.B.

This report states the previous non-compliance occurred on October 21, 2016, when he signed out of his then Residential Reentry Management Center (RRC) on a pass to Concentra Medical Center in Albuquerque. J.B. failed to return to the facility as expected. J.B. was subsequently terminated from this RRC and was declared an absconder.

On October 24, 2016, J.B. self-surrendered at the federal courthouse in Albuquerque. Court security officers noticed J.B. had slurred speech and was having trouble staying awake. A probation officer attempted to interact with J.B. to assess his condition, and he kept falling asleep and mumbling inaudibly during the brief interaction. Paramedics were called and J.B. was transported to University of New Mexico Hospital (UNMH) for further evaluation. J.B. was eventually cleared by hospital staff and taken into custody.

The report completed by Albuquerque Fire Rescue (AFR) was requested for this investigation. It was observed the call for service notes on October 24, 2016, that the incident was in reference to

a possible overdose. Once on scene AFR spoke with J.B.'s mother, who stated he had taken Xanax (a brand name for alprazolam) but does not know how many. J.B. denied being under the influence of any other substance at the time.

J.B. was transported by Albuquerque Ambulance Service (AAS) to UNMH for further evaluation. The AAS report stated J.B. stated he took two Xanax pills and two shots of Hennessy liquor.

It should be noted, per the PMP history reviewed, J.B. received a prescription for alprazolam from CNP Marchenko on October 21, 2016. This office visit is documented in J.B.'s medical file as well.

On February 15, 2017, J.B.'s supervision was revoked and he was sentenced to five months, with credit for time served, followed by three years of supervised release. This sentence stemmed from the non-compliance that took place on October 21, 2016. J.B. commenced his second term of supervised release on March 13, 2017. P.O. Newton stated in his report that J.B.'s original release date was March 22, 2017, and then changed to March 13, 2017. This change caused P.O. Newton to have to place J.B. in a RRC until he could be placed into Four Winds Behavioral Health, an inpatient substance abuse treatment center. P.O. Newton was able to secure a bed space at La Pasada Halfway House in Albuquerque until J.B. was able to go to Four Winds Behavioral Health.

During J.B.'s supervised release intake processing on March 13, 2017, J.B. was asked if he had used any illegal substances while in custody. J.B. stated he used two strips of Suboxone (a prescription medication used to treat opioid addiction and can be used to treat pain) daily during his entire term of incarceration. J.B. said he obtained the Suboxone illegally and was taking it for pain management. J.B. stated he could not be prescribed narcotic medications and the medicine that was available to him (Tylenol and Ibuprofen) did not do anything for him. During this intake process a urine sample was collected and submitted to the Drug Lab. On March 20, 2017, the test returned positive for Suboxone, as expected.

The violation report documents the current non-compliance for the supervised release that took place on March 13, 2017. Immediately upon commencement of this release, J.B. started to schedule appointments with CNP Marchenko to obtain narcotic medications for pain and powerful benzodiazepine (Alprazolam is a benzodiazepine, Xanax is a brand name for the alprazolam) medications for anxiety.

P.O. Newton stated he advised J.B. that Four Winds Behavioral Health would not accept him in the program with the medications he was seeking. P.O. Newton explained to J.B. that Four Winds Behavioral Health has a psychiatrist that visits the facility weekly that would be able to prescribe less powerful medication that are effective when combined with the counseling he would receive at the facility. P.O. Newton asked J.B. to have his pain management doctor contact him prior to prescribing any narcotic medications, so he could explain the history of his opiate drug abuse to the doctor.

On March 20, 2017, P.O. Newton was contacted by CNP Marchenko via telephone. P.O. Newton stated he advised CNP Marchenko that J.B. was found in possession of narcotic medications that were not prescribed to him in the past and that he had a recent overdose from medications that he prescribed to him (per J.B.'s own admission.) P.O. Newton went on to explain that there had been a psychological examination completed by Dr. Mercedes Marshall, wherein she stated J.B. is highly likely to abuse narcotic medications if prescribed. CNP Marchenko stated he had received a copy of Dr. Marshall's evaluation and was aware. P.O. Newton stated CNP Marchenko expressed concern with the information he was providing. CNP Marchenko stated he would "fire" (discontinue treating) J.B.

On March 21, 2017, J.B. advised La Pasada Halfway House staff that he needed to see his doctor for high blood pressure. La Pasada Halfway House staff allowed him to meet with his doctor the same day. Upon returning to La Pasada Halfway House, J.B. was in possession of 90 oxycodone tablets and 90 alprazolam tablets, with a valid prescription for both. Both of these medications were verified by P.O. Newton and by reviewing the PMP that they were prescribed by CNP Marchenko.

According to the La Pasada Halfway House report, J.B. was permitted to take his first dose of medication in their presence, in accordance to the prescription's instructions. The La Pasada Halfway House staff member documented 89 tablets of each medication remaining. J.B.'s prescription stated he may take the medication up to three times a day. Approximately three hours after his first dose was taken, he asked for an additional dose. This dose would have brought the pill count to 88. During this time that staff member noticed J.B. putting something in his pocket. When the staff member had J.B. empty his pockets, an oxycodone pill fell on the floor. The staff member assumed it was the same pill that J.B. was given (second dose.) J.B. told the staff member he was saving the pill to take it before bed. The staff member explained to J.B. that he was not allowed to do that and needed to the pill now, which he did. J.B. came back three hours later and requested his final dose for the day. The staff member counted the pills and discovered the oxycodone medication was short one tablet (86 instead of 87.) When J.B. was questioned about this he stated that he might have taken an extra pill earlier when he received his second dose of the day.

On March 22, 2017, P.O. Newton received a telephone call from La Pasada Halfway House advising J.B. had slurred speech, swelling in his arms and legs, and was having trouble walking. P.O. Newton responded to La Pasada Halfway House immediately to assess the situation. P.O. Newton observed J.B. was dragging his feet while walking, had slurred speech, and was swaying while standing still. Paramedics were called and J.B. was assessed. Paramedics indicated J.B. could not answer basic questions (day of the week or who the president of the United States was.) J.B. was then transported to the hospital by ambulance for further evaluation. An inventory of J.B.'s room was done with P.O. Newton present. During this inventory a ball of tinfoil and syringe was found on top of a wall unit in the room. Also a tablet of alprazolam was found inside of J.B.'s pack of cigarettes. On March 23, 2017, J.B. was terminated from La Pasada Halfway House for misuse of his medication, concealing medication, and possessing drug paraphernalia.

On May 17, 2018, at approximately 1500 hours, I interviewed U.S. Probation Officer Eric Newton. P.O. Newton provided me with a copy of the report he wrote and confirmed the statements in his reports were true and accurate.

- **Patient #3 J.B.A.**

J.B.A. began her treatment with CNP Marchenko on May 8, 2015. It's notated this visit was to establish with CNP Marchenko and the chief complaints for this visit were sleep problems, headaches, migraines, and depression. She indicated her current medications were Ibuprofen and Tylenol. J.B.A. indicated family history significant for alcohol and drug addiction on her intake paperwork. J.B.A. stated she has pain in her head, neck, shoulder, foot, hip, and lower back. J.B.A. said she was in a motor vehicle roll over collision approximately two and a half weeks prior. In the review of body systems assessment (subjective information from the patient) J.B.A. indicates she has experienced appetite changes, feeling tired, sleep problems, and generally not feeling well. J.B.A. also stated she has problems with her memory, concentration, and thinking. There is no documentation that these symptoms were followed up with by CNP Marchenko or if he referred her to counseling. There is no documentation regarding laboratory tests, or diagnostics ordered to assess any medical problems or injuries J.B.A. may have been suffering from. The physical examination stated weight at 242 pounds with a BMI of 39.1. The assessment/plan notated in the medical file stated a controlled substance agreement was signed, patient will do x-ray of the lumbar and cervical spine, and patient was prescribed alprazolam. There is no documentation that CNP Marchenko discussed the risk and/or benefit of taking alprazolam with J.B.A.

A PMP report that was prepared on May 8, 2015, was in the medical file. The range on this report was for the past year (05/08/2014 through 05/8/2015). This PMP reflects four providers, three prescriptions, and three pharmacies. A prescription for oxycodone was filled on April 15, 2015, that was prescribed by University of New Mexico Hospital (UNMH), which is consistent with the date of the motor vehicle crash J.B.A. mentioned. There was no documentation that what the PMP reflected was discussed with J.B.A. In the medical file was a fax request to UNMH for CT scan, x-ray, and labs for J.B.A. but there were no records from UNMH in the medical file.

A PMP report prepared on February 19, 2016, was located in the medical file. The date range for this report was for the last year (02/19/2015 through 02/19/2016.) There was only two of three pages of this report in the medical file and the report does not include number of pharmacies. This PMP reflects six prescriptions written during that time range including oxycodone, Hydrocodone, and alprazolam from four different prescribers. The PMP states a prescription for Hydrocodone was filled on January 30, 2016, and another on February 15, 2016.

A second office visit was documented on February 22, 2016. This visit was approximately eight months since J.B.A.'s previous office visit with CNP Marchenko. The time between appointments was not addressed in the medical file. The chief complaint for this visit was anxiety. J.B.A. stated her history of present illness was high anxiety, depression, sleeping

problems, and anxious all the time. J.B.A. said these symptoms started when she was approximately fourteen years old. It was previously established that patient will get an x-ray done, however no documentation of this was found in the medical file. Additionally there was no documentation that J.B.A.'s psychological wellbeing was discussed or if a diagnosis from the counselor she stated seeing was available. There were not any notes that a urinalysis test was conducted, however there were results present in the medical file reflecting J.B.A. tested positive for buprenorphine (not prescribed) and opiates. There was no discussion in the record regarding these results. The PMP report that was prepared two days prior to this appointment was not documented as being addressed with J.B.A. J.B.A. was prescribed alprazolam during this office visit, this was confirmed on the PMP report. The prescription was filled that day.

On February 24, 2016, at approximately 0730 hours, Bernalillo County Sheriff's Department responded to a call for service at Joy Junction homeless shelter in reference to a subject said to be under cardiac arrest. Upon arrival, life saving measures were attempted but were unsuccessful. OMI was called out to the scene and the subject was later identified as J.B.A. This incident occurred two days after J.B.A.'s last office visit with CNP Marchenko. The OMI report stated the cause of death was "toxic effects of multiple drugs" (alprazolam, oxycodone, and oxymorphone.)

- **Patient #4 R.N.Y.**

R.N.Y. began his treatment with CNP Marchenko on August 18, 2015. This office visit is documented in the medical file. The chief complaint on this day was not listed but it is documented that this was a walk in appointment. The diagnosis indicated lumbago and cervicalgia. There was a signed and dated financial policy and consent form, a HIPPA patient consent form, and a wellness update form all dated and signed on this visit.

On November 10, 2015, a second office visit was documented in the medical file. The notes were blank except for the patient demographics. This record reflects that this was a walk in visit. No other information is documented for this visit. A PMP report was prepared on this day with a date range of the last year (11/10/2014 through 11/10/2015.) This report indicated twenty eight prescriptions, three providers, and three pharmacies during the reported date range. Prescriptions included Diazepam, Lorazepam, Clonazepam, and Temazepam. According to the PMP the Clonazepam, Lorazepam, and Diazepam were all filled within the month of October 2015, written by two other providers. There is no documentation in the record if this was discussed with R.N.Y. CNP Marchenko did not prescribe any medications during this visit.

On March 8, 2016, a PMP report was prepared with a date range for the last year (03/08/2015 through 03/08/2016.) There were only two of four pages present in the file. According to the PMP the last prescription was for Clonazepam filled on February 18, 2016. This report is dated March 8, 2016, and initialed at the bottom.

On March 8, 2016, a third office visit was documented in the medical file. The chief complaint on this day was back pain but the pain level was not assessed or documented. History of present

illness states R.N.Y. was involved in a motorcycle crash in 2013. R.N.Y. said he got an x-ray done and there was something seen on the x-ray. R.N.Y. stated the pain is limiting him from doing normal activities during the day. R.N.Y. requested an MRI be completed and provided an x-ray that had been completed on December 11, 2015. This x-ray indicated minimal degenerative changes of the lower lumbar spine. The review of systems (subjective information from the patient) indicated R.N.Y. complained of joint and muscle pain and excessive anxiety. The physical examination indicated R.N.Y. had good range of motion in all joints. R.N.Y. indicated he is currently being prescribed Brintillex, Clonazepam, Gabapentin, and Losartan.

There was no drug screening completed during this visit and no controlled substance agreement signed for this visit. According to the PMP, CNP Marchenko prescribed oxycodone during this visit, which was filled on the same day. This was the first prescription CNP Marchenko wrote R.N.Y. for a controlled substance.

On March 20, 2016, new patient paperwork form was filled out and dated by R.N.Y. The problems he indicated having were hypertension, mental illness, headaches, and depression. Current medications listed were the same as listed on the office visit that occurred on March 8, 2016. On this day there was not an office visit completed. It appears that R.N.Y. went in to only fill out paperwork on this day.

On March 28, 2016, a PMP report was prepared with the date range for the last year (03/28/2015 through 03/28/2016.) This report reflected twenty two prescriptions, three prescribers, and three pharmacies. The last two prescriptions on this report were Clonazepam filled on March 18, 2016, written by another provider, and oxycodone filled on March 8, 2016, written by CNP Marchenko.

On March 28, 2016, a fourth office visit was documented in the medical file. The chief complaint on this day was patient was there to establish and was experiencing lower back pain with a pain level of 2/10. The physical examination indicated weight at 302.6 pounds with a BMI of 36.8. Blood pressure was 150/102 with a pulse rate of 123. There is no documentation that the blood pressure and pulse were addressed with R.N.Y. All other information in the file remained the same as the last visit on March 8, 2016. A controlled substance agreement was signed and dated at this visit. There were no new x-ray or MRI results notated in the record. A urine drug screening was completed but there is no documentation of the results or if the specimen was sent to a laboratory in the record. There was a report printed on April 28, 2016, that outlined the urine drug screening that was completed on this visit. It indicated positive results for benzodiazepine, opiate, and oxycodone. An additional report from "Auspicious Laboratory" was in the file. This report indicates no prescribed medications were listed on the requisition form. Oxycodone is handwritten-in after this statement. This report also indicated positive results for benzodiazepine, Cyclobenzaprine, Gabapentin, and cocaine metabolite. No opiates were detected on this test. According to the PMP, CNP Marchenko prescribed oxycodone during this visit (03/28/2016,) which was filled the following day. There was no discussion documented about the PMP report or the risks of taking a benzodiazepine and opioid medication in combination.

A fax conformation dated April 11, 2016, was in the patient file. This fax contained a prior

authorization request form from New Mexico Medicaid Managed Care. It indicated a request for an MRI of the lumbar spine. No MRI results were located in the record.

On April 22, 2016, a PMP report was prepared with the date range for the last year (4/22/2015 through 04/22/2016.) Only two of four pages are present in the medical file. This report indicates the last three prescriptions filled were Diazepam filled on April 6, 2016 written by another provider, oxycodone filled on March 29, 2016, written by CNP Marchenko, and Clonazepam filled on March 18, 2016, written by another provider. This report was dated April 25, 2016, and initialed at the bottom.

On April 25, 2016, a fifth office visit was documented in the medical file. The chief complaint on this day was lower back and neck pain with a pain level of 4/10. Physical examination indicates weight at 302.2 pounds with a BMI of 36.9. Blood pressure was 189/101 with a pulse rate of 112. There is no documentation that R.N.Y.'s blood pressure and pulse rate were discussed. There is no documentation in the record that a urine drug screening was completed, however there was preliminary drug screen report printed out on April 27, 2016, in the medical file. This report indicated positive results for benzodiazepine and opiates, but was negative for oxycodone. There is no documentation that these results were discussed with R.N.Y. There was no documentation that the PMP was discussed with R.N.Y. in regards to the oxycodone prescription he had written him, being filled and not showing up on his urine drug screen test. According to the PMP, CNP Marchenko prescribed oxycodone during this office visit, which was filled the following day. Being that the past two UDS results were negative for oxycodone and CNP Marchenko continued to prescribe it, there is a high likelihood that R.N.Y. had a large quantity of oxycodone on hand.

On April 29, 2016, at approximately 0405 hours, R.N.Y. was found unresponsive on his kitchen floor. CPR was initiated by his wife and then continued by EMS upon their arrival but resuscitation was unsuccessful. This happened four days after R.N.Y.'s last visit with CNP Marchenko. The OMI indicated cause of death was cocaine, oxycodone, and Diazepam poisoning. As previous urine drug screens reflected no trace of oxycodone, there was a potential for a large number of pills on hand of that medication. R.N.Y.'s spouse told the medical investigator that R.N.Y. has a history of prescription pill abuse, anxiety, and depression. R.N.Y.'s spouse stated he went to rehab two years ago and remained committed to sobriety but he did struggle with it.

- **Patient #5 U.N.**

U.N. began his treatment with CNP Marchenko on August 10, 2015. The medical file reflects this was an office visit however the procedures performed are not marked. The diagnosis given on this day was lumbago. This visit was notated as a walk in. According to the PMP, CNP Marchenko prescribed oxycodone during this visit which was filled on the same day. This is the first controlled substance CNP Marchenko prescribed to U.N.

On August 17, 2015, a PMP report was prepared with a date range for the last year (08/17/2014 through 08/17/2015.) Only two of seven pages are present in the medical file. The report indicates the last five prescriptions were written during the month of August 2015. Two



prescriptions for Diazepam, written by two different providers, and three prescriptions for oxycodone written by three different providers, one of which was the prescription CNP wrote during U.N.'s first office visit on August 10, 2015.

On August 17, 2015, a second office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 7/10. History of present illness stated patient was involved in a motor vehicle crash in 2010 causing trauma to lower back. Patient did have an MRI completed in 2010. Review of systems notated that patient has no joint or muscle pain. The physical examination indicated weight at 296.8 pounds with a BMI of 40.3. Imaging studies provided were five years old and no new diagnostic or imaging studies were ordered. Assessment/plan stated no urine drug screening at this time, however a drug screening was conducted that was positive for oxycodone but negative for benzodiazepine. According to the PMP report U.N. was prescribed Diazepam (Benzodiazepine) on August 9, 2015, by another provider. There is no documentation that the drug screening or PMP was discussed with U.N. A controlled substance agreement was signed on this visit and oxycodone was prescribed and filled on the same day.

According to the DEA report they were contacted on August 17, 2015, by another provider that had been called by Walgreens Pharmacy accidentally in regards to the prescription CNP Marchenko had written for oxycodone. This provider gave Special Agent (SA) Olsen the phone number to the pharmacy that had contacted him. SA Olsen contacted Walgreens Pharmacy and spoke with the pharmacist about their concern. The pharmacist had seen an alert on U.N.'s PMP that stated he had stolen prescription pads in the past and is known to forge them for personal use.

SA Olsen contacted CNP Marchenko's office to verify the validity of this prescription. She spoke to a medical assistant by the name of Amanda. Amanda stated CNP had seen the alert on U.N.'s PMP and did prescribe oxycodone that day. CNP Marchenko was unavailable to speak with SA Olsen at that time.

Shortly after, SA Olsen received a call from CNP Marchenko. SA Olsen advised CNP Marchenko of U.N.'s history with stealing prescription pads and forging prescriptions for his personal use. SA Olsen further advised CNP Marchenko that U.N. is addicted to oxycodone and has had at least two siblings pass away from the abuse of this medication. CNP Marchenko stated he was not the DEA and was not responsible for investigating U.N.'s past. CNP Marchenko said U.N. has a legitimate medical reason to be prescribed oxycodone for damage he had sustained to his back.

On September 11, 2015, a PMP report was prepared with the date range for the last year (09/11/2014 through 09/11/2015.) Only two of seven pages were present in the medical file. The PMP indicates that of the last three prescriptions, two were written by CNP Marchenko for oxycodone on August 17<sup>th</sup> and 10<sup>th</sup> 2015, and one written by another provider for Diazepam on August 9, 2015. This report is dated September 14, 2015, and is initialed at the bottom.

On September 14, 2015, a third office visit is documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 7/10. The physical examination indicated weight at 305.2 pounds with a BMI 41.5. Blood pressure was documented at 136/110 with a pulse rate of 121. According to this record U.N. gained 8.4 pounds since his last visit and blood pressure and pulse rate remained elevated. There is no documentation in the file that these things were addressed with U.N. According to the PMP, CNP Marchenko prescribed oxycodone on this visit, which was filled on the same day.

On October 7, 2015, a fourth office visit was documented in the medical file. The chief complaint on this visit was patient was there for injections. Patient also complained of lower back and left leg pain, and severe anxiety. Pain level was at 7/10 and anxiety level was at 9/10. Physical examination indicated weight at 309.1 pounds with a BMI of 41.9. U.N. gained 3.9 pounds since his last visit and blood pressure was slightly lower but remained elevated. There is no documentation in the file that these things were discussed with U.N. It is notated in the file that an injection of Lidocaine and Depo-Medrol was administered during this visit into U.N.'s back. It was notated that this procedure was of low complexity and did decrease the pain U.N. reported.

On October 13, 2015, a PMP report was prepared with the date range for the previous year (10/13/2014 through 10/13/2015.) Only two of six pages were present in the record. The last three prescriptions reflected in this report were the oxycodone CNP Marchenko prescribed on September 14, 2015, and August 17<sup>th</sup> and 10<sup>th</sup> 2015. This report was dated October 13, 2015, and was initialed at the bottom.

On October 13, 2015, a fifth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 7/10. The chief complaint and history of present illness remain the same as the visit on August 17, 2015. Physical examination indicates weight at 310 pounds with a BMI of 42.0. Blood pressure was 139/105 with a pulse rate of 104. U.N.'s weight continues to increase and his blood pressure is still elevated. Morbid obesity was added to assessment/plan at this visit. There is no documentation that these things were addressed with U.N. There is no documentation in the file that there was a discussion regarding pain relief from the injections CNP Marchenko administered six days prior to this visit. According to the PMP, CNP Marchenko prescribed oxycodone during this visit, which was filled the same day.

Lab results from "Quest Diagnostics" were present in the medical file, this report indicated a blood sample was collected on September 14, 2015. These laboratory orders were not documented in the medical file for the office visit that occurred that day. The report indicates that it was faxed to the provider on October 16, 2015. The report is initialed and dated October 19, 2015.

On October 21, 2015, a sixth office visit is documented in the medical file. The chief complaint on this day was patient is here for injections and lower back pain at a pain level of 6/10. Physical examination indicated weight at 306.5 pounds with a BMI of 41.6. U.N. experienced a 3.5 pound

weight loss since his last visit. Blood pressure was indicated at 144/90 with a pulse rate of 67. Blood pressure remained elevated and pulse rate was much lower than previously recorded on U.N.'s other office visits. There is no documentation that this was discussed or addressed. There is no documentation that the lab results previously received were discussed with U.N. It is noted that U.N. received an injection in his back of Lidocaine and Depo-Medrol on this visit.

On November 4, 2015, a seventh office visit was documented in the medical file. The chief complaint on this day was noted in the file as injections, pain level was not assessed. Physical examination indicated weight at 306.5 with a BMI of 41.6. Blood pressure was indicated at 177/106 with a pulse rate of 106. Weight remained the same as the last visit. Blood pressure and pulse were elevated just as in previous visits. There is no documentation that these things were discussed with U.N. There is no documentation that the effectiveness of the previous injections were discussed with U.N. It is noted that U.N. received an injection of Lidocaine and Depo-Medrol into his back on this visit. It is also noted that CNP wrote a prescription for oxycodone to be refilled on November 10, 2015. According to PMP this prescription for oxycodone was filled on November 10, 2015.

On November 19, 2015, an eighth office visit is documented in the medical file. The chief complaint on this day was patient is here for injections and complaint of lower back and face pain at a pain level of 6/10. History of present illness states U.N. said the injections were offering some relief and his pain level is lower than usual. U.N. stated he is experiencing face pain when it's cold due to a cyst in mucus cavity area. It is noted in the medical file that U.N. received an injection of Lidocaine and Depo-Medrol into his back on this visit.

On December 8, 2015, a PMP report was prepared with the date range for the last year (12/08/2014 through 12/08/2015.) Only two of five pages were present in the medical file. This report indicates the last three prescriptions were for oxycodone, all written by CNP Marchenko. The dates for these prescriptions were November 10, 2015, October 13, 2015, and September 14, 2015. This report was dated December 9, 2015, and was initialed at the bottom.

On December 9, 2015, a ninth office visit was documented in the medical file. The chief complaint on this day was patient is here for injections and lower back pain with a pain level of 6/10. Physical examination indicates weight at 304.4 with a BMI of 41.3. Blood pressure was indicated at 142/103 with a pulse rate of 92. U.N. experienced a 2.1 pound weight loss since his last visit. Blood pressure and pulse remains elevated. It is noted in the procedure note that "pain is less" however pain level reported in chief complaint remains the same as visit that took place on November 19, 2015. Pain level reported at 6/10 in spite of opioid medication and injections. It is noted in the record that U.N. received an injection of Lidocaine and Depo-Medrol on this visit. According to the PMP, CNP Marchenko prescribed oxycodone on this day which was filled the same day. The medical record indicates U.N. was administered a urine drug screening during this appointment. The results indicated positive results for opiate and oxycodone. This test reflected the urine creatinine was 18. Based on the reference range of normal creatinine level (20-300), this was low. There is no documentation that these results were discussed with U.N.

On December 9, 2015, a lab report from "Auspicious Laboratory" is present in the medical file. This report states the sample was collected on December 9, 2015, and reported December 15, 2015. The results of this test was consistent with the medication U.N. was being prescribed, however it states that the sample was possibly diluted. This report is dated January 6, 2016, and is initialed at the bottom.

On January 5, 2016, a PMP report was prepared with the date range for the last year (01/05/2015 through 01/05/2016.) Only two of five pages were present in the medical file. This report indicates the last three prescriptions were for oxycodone written by CNP Marchenko on October 13, 2015, November 10, 2015, and December 9, 2015. This report was dated January 6, 2016, and initialed at the bottom of the page.

On January 6, 2016, a tenth office visit is documented in the medical file. The chief complaint on this day was patient was there for injections and lower back pain with a pain level of 6/10. Physical assessment indicated weight at 300 pounds with a BMI of 40.7. Blood pressure was 139/96 with a pulse rate of 91. U.N.'s weight has dropped 4.4 pounds since last visit and blood pressure remains elevated. U.N. stated the injections he's been receiving help for three days and his pain worsens on the fourth day. It is notated in the medical file that U.N. received an injection of Lidocaine and Depo-Medrol into his back on this visit. A blood pressure medication by the name of Benicar was added to U.N.'s medication list. A urine drug test is mentioned in the notes and notated a urine sample will be sent out for confirmation. No results for the test administered in the office are in the file. According to the PMP, CNP Marchenko wrote a prescription for oxycodone during this visit, which was filled on the same day.

A drug screen results form from "Auspicious Laboratory" is present in the medical file. This report states the sample was collected on January 6, 2016, and reported on January 9, 2016. The results for this urine sample tested positive for oxycodone, which is consistent with the prescribed medication. This test showed creatinine level of 16.7, which is lower than normal range (20-300.) The report indicates that this was a possibly diluted sample.

A letter from Blue Cross Blue Shield of New Mexico is present in the medical file. This letter is dated January 29, 2016. It states that the request for "Benicar" was not granted due to the high dollar amount of this particular medication. It states that a generic alternative would have to be prescribed and proved ineffective in order for Medicaid to cover this medication.

On February 2, 2016, a PMP report was prepared with the date range of the last year (02/02/2015 through 02/02/2016.) Only two of four pages were present in the medical file. The last two prescriptions on this report were for oxycodone written by CNP Marchenko on December 9, 2015 and January 6, 2016. There has not been a prescription for Diazepam since August 9, 2015, and no other prescribers since August 9, 2015. This report is dated February 2, 2016, and initialed at the bottom.

On February 2, 2016, an eleventh office visit is documented in the medical file. The chief complaint on this day was patient is here for a physical, follow up labs, and lower back pain with

a pain level of 6/10. Physical examination indicates weight at 282.2 pounds with a BMI of 38.3. Blood pressure was 141/99 with a pulse rate of 80. U.N. lost 17.8 pounds since his last visit and blood pressure of elevated but has gone down since last visit. There is no documentation that the denial from Blue Cross Blue Shield was discussed with U.N. A new controlled substance agreement was signed and dated during this office visit. According to the PMP, CNP Marchenko wrote a prescription for oxycodone during this visit, which was filled on the same day.

A letter from Blue Cross Blue Shield labeled "Health Guide" was present in the medical record. This letter states that a recent review of U.N.'s prescription claims has identified that he has a daily Morphine Equivalent Dose (MED) of at least 90mg for the last sixty consecutive days. It states that this may indicate potential overuse of opioid medications during a recent 120 day period. This letter advises CNP Marchenko to evaluate U.N.'s pattern of opioid use to ensure that he is following the drug regimen as he intended.

On March 1, 2016, a twelfth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 6/10. Physical examination indicates weight at 277.8 pounds with a BMI of 37.7. Blood pressure was 151/115 with a pulse rate of 106. U.N. has lost 4.4 pounds since his last visit and blood pressure and pulse rate remain elevated. There is no documentation that these things were discussed with U.N. A preliminary urine drug screening was conducted in the office with a positive result for opiate and oxycodone. This test stated urine creatinine was at 17, which is notated as low in the reference range of 20-300. There is no documentation that this urine drug screening was discussed with U.N. There is no documentation that the "Health Guide Report" received from Blue Cross Blue Shield was discussed with U.N. According to the PMP, CNP Marchenko prescribed oxycodone during this office visit, which was filled on the same day.

The urine drug screen that was completed during the office visit on March 1, 2016, was sent to "Auspicious Laboratory" and received by them on March 8, 2016. Their report was present in the medical file. This report stated the sample was positive for oxycodone, which is consistent with the prescribed medication. The urine validity section stated the creatinine level was low and this was a possibly a diluted sample.

On March 28, 2016, a PMP report was prepared with the date range of the last year (03/28/2015 through 03/28/2016.) Only two of three pages were present in the medical file. The last two prescriptions listed on this report were oxycodone written by CNP Marchenko on January 6, 2016, February 2, 2016, and March 1, 2016. This report was dated March 29, 2016, and initialed at the bottom.

On March 29, 2016, a thirteenth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 7/10. Physical examination indicated weight at 277.7 with a BMI of 37.7. Blood pressure was 143/87 with a pulse rate of 81. Weight essentially unchanged and blood pressure and pulse rate remains elevated. There is no documentation indicating this was discussed with U.N. A preliminary urine drug screening was completed during this visit with negative results for opiates and oxycodone. There is no

documented discussion of the negative findings for oxycodone with U.N. According to the PMP, CNP Marchenko prescribed oxycodone during this visit, which was filled on the same day.

A report from "Auspicious Laboratory" was present in the medical file. This report stated a sample that was collected on March 29, 2016, was submitted to them on April 5, 2016. This report indicated results negative for opiates and oxycodone. It measured oxycodone levels at 87 ng/mL which is significantly lower than previous urine drug screening tests U.N. completed. The creatinine level on this sample was normal, unlike previous urine drug screening tests U.N. was administered. This report was dated April 26, 2016, and initialed at the bottom.

Based on my training and experience, diluted and/or UDS results with no prescribed drug present can often be a sample provided by someone other than the actual patient or can be a sign of drug diversion.

On April 26, 2016, a PMP report was prepared with the date range for the last year (04/22/2015 through 04/26/2016.) Only two of four pages were present in the medical file. The last three prescriptions listed on this report were for oxycodone on February 2, 2016, and March 1<sup>st</sup> and 29<sup>th</sup> 2016. These prescriptions were written by CNP Marchenko. This report was dated April 26, 2016, and initialed at the bottom.

On April 26, 2016, a fourteenth office visit was documented in the medical file. The chief complaint on this day was lower back pain and left eye redness and pain with a pain level of 7/10. Physical examination indicates weight at 271.2 pounds with a BMI of 36.8. Blood pressure was at 131/93 with a pulse rate of 86. Weight has decreased by 6.5 pounds since last visit. Blood pressure and pulse rate remain elevated. There is no documentation that these things were discussed with U.N. A preliminary urine drug screening was completed during this office visit with positive results for opiate and oxycodone. There is nothing documented about discussing the previous urine drug screen results from March 29, 2016, with U.N. CNP Marchenko notated a prescription for pink eye in the assessment/plan. According to the PMP, CNP Marchenko prescribed oxycodone during this office visit which was filled the same day.

A report from "Auspicious Laboratory" was present in the medical file. This report stated the sample evaluated was collected on April 26, 2016, and received by them on May 2, 2016. The results from this test were positive for oxycodone at a level of greater than 2000 ng/mL, which is significantly higher than the last confirmation test completed during the last visit (oxycodone level at 87 ng/mL). This report is not dated or initialed, it is unknown if it was reviewed by CNP Marchenko.

On May 23, 2016, a PMP was prepared with the date range for the last year (05/23/2015 through 05/23/2016.) Only two of four pages were present in the medical file. The last two prescriptions listed on the report were for oxycodone written by CNP Marchenko on March 29, 2016, and April 26, 2016. This report was dated May 24, 2016, and was initialed at the bottom.

On May 24, 2016, a fifteenth office visit is documented in the medical file. The chief complaint

on this day was lower back pain with a pain level of 7/10. Physical examination indicates weight at 273.2 pounds with a BMI of 37.1. Slight increase in weight noted and blood pressure was slightly elevated. A new prescription for Losartan was added for treatment of hypertension. According to the PMP, CNP Marchenko prescribed oxycodone during this office visit.

On June 21, 2016, a sixteenth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 6.5/10. Physical examination indicated weight at 273.6 pounds with a BMI of 37.1. Blood pressure was at 155/93 with a pulse rate of 80. Weight remained the same as the last visit and blood pressure remains elevated. A new prescription for a diuretic used for treatment of hypertension (Hydrochlorothiazide) was added to assessment/plan. According to the PMP, CNP Marchenko prescribed oxycodone during this visit which was filled on the same day.

On August 16, 2016, a seventeenth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 6.5/10 and hypertension. U.N. stated he ran out of blood pressure medication two days prior. Physical examination indicated weight at 274 pounds with a BMI of 37.2. Blood pressure was at 151/105 with a pulse rate of 86. History of present illness indicates a blood pressure re-check of 129/93. It is unknown if medication was administered in office to bring this down. There is no documentation that U.N.'s blood pressure or weight were discussed with him. A urine drug screening was completed in the office on this day. The report for this test was present in the medical file and indicated positive results for oxycodone. According to the PMP, CNP Marchenko prescribed oxycodone during this visit which was filled on the same day.

On September 12, 2016, a PMP report was prepared for the date range of the last year (09/12/2015 through 09/12/2016.) Only two of three pages were present in the medical file. This report indicated CNP Marchenko continues to prescribe oxycodone on a monthly basis, no other medications or prescribers are noted on the PMP.

On September 13, 2016, an eighteenth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 7/10, hypertension, and a cough. Physical examination indicated weight at 275.4 pounds with a BMI of 37.4. Blood pressure was at 144/108 with a pulse rate of 104. There was no significant weight change and blood pressure and pulse remained elevated. There is no documentation that this was discussed with U.N. and no indication that a re-check of blood pressure was done as in the previous visit. According to the PMP, CNP Marchenko prescribed oxycodone during this visit which was filled on the same day.

On October 12, 2016, a nineteenth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 6/10 and hypertension. Physical examination indicated weight at 274.6 pounds with a BMI of 37.2. Blood pressure was at 150/106 with a pulse rate of 107. There is no documentation about whether or not U.N. was taking his blood pressure medication as directed or any referral to another provider for his consistently high blood pressure. Assessment/plan indicated Miconazole 2% was added to U.N.'s medication list. Miconazole is a topical antifungal ointment that can be purchased over the

counter or prescribed in some cases. It is unknown why this was added to U.N.'s medications, there is no documentation in the notes as to the necessity. According to the PMP, CNP Marchenko prescribed oxycodone during this visit which was filled on the same day.

On November 8, 2016, the twentieth office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 6/10. Physical examination indicated weight at 276 pounds with a BMI of 37.4. Weight was slightly increased from last visit and blood pressure is slightly elevated but is lower than previous visits. All other notes for this visit are unchanged from the visit on October 12, 2016. According to the PMP, CNP Marchenko prescribed oxycodone during this visit which was filled on the same day.

On January 3, 2017, the twenty first office visit was documented in the medical file. The chief complaint on this day was lower back pain with a pain level of 6/10. U.N. also complained of a sore throat and cough during this visit. Physical examination indicated weight at 287 pounds with a BMI of 38.9. Blood pressure was at 136/99 with a pulse rate of 97. Weight increased by 11 pounds and blood pressure and pulse rate were elevated. According to the PMP, CNP Marchenko prescribed oxycodone on December 7, 2016, but there is no documentation of an office visit or a postdated prescription that was written during U.N.'s office visit in November 2016. The PMP also reflects that CNP Marchenko prescribed oxycodone during this office visit which was filled on January 5, 2017. This was the last prescription U.N. received from CNP Marchenko.

A review of the PMP report reflects that beginning February 28, 2017, U.N. began receiving prescriptions for Suboxone from another provider. Suboxone is a narcotic used to treat pain as well as addiction to narcotic pain relievers.

On June 28, 2018, at approximately 1204 hours, I interviewed CNP Marchenko's former office manager, Amanda Wilson (formerly A. Grubbs.) Mrs. Wilson stated she started working for CNP Marchenko in 2008 when she was helping him start his practice "Medicus." Mrs. Wilson said the practice was just starting out and CNP Marchenko was unable to pay her at the time. Mrs. Wilson told me she left because of this and looked for employment elsewhere. Mrs. Wilson stated she returned to work for CNP Marchenko in 2010 once the practice had enough clientele to pay her appropriately, and remained employed there until the clinic shut down in 2017. Mrs. Wilson said her title was "Medical Assistant" (MA) and her responsibilities included everything from checking-in patients, to checking vitals prior to CNP Marchenko conducting the office visit. Mrs. Wilson said she eventually transitioned into the Office Manager/Lead MA and dealt only with the back office duties (insurance, billing, payroll, etc.) Mrs. Wilson stated Medicus provided mostly primary care services at that time. Mrs. Wilson told me Medicus transitioned to approximately 25% family practice type services and the remainder of services provided were pain management. Mrs. Wilson did not remember when or why this transition occurred. Mrs. Wilson told me she recalled someone coming into the practice that explained to CNP Marchenko the processes he needed to follow in order to provide pain management. Mrs. Wilson stated she remembers this person explaining the process of screening the patients he was prescribing pain medication, conducting urine testing, where to send the samples for analysis (lab), and how to bill for these services. Mrs. Wilson did not remember who came into the practice or when this



occurred but she did say that out of the eight years she worked for Medicus, approximately six of those were primarily pain management type services. Mrs. Wilson said Medicus was never advertised as a pain management clinic.

Mrs. Wilson stated the procedure they followed for preparation for the office visit was to print out the PMP, and conduct a urinalysis for the pain management patients. Mrs. Wilson said when they first started doing the urinalysis it would be a "quick read" cup, meaning the cup itself had the testing strip built into the cup. Mrs. Wilson stated these cups would display a positive or negative result on the outside of the cup. Mrs. Wilson said any positive test would be sent to an outside lab for evaluation. Mrs. Wilson stated as their pain management clientele increased CNP Marchenko opened a lab downstairs that all urinalysis tests would be analyzed at. Mrs. Wilson said a copy of the PMP as well as the urinalysis results would be placed in the box outside of the door for each pain management patient for CNP Marchenko to review prior to the office visit.

Mrs. Wilson went on to explain that Medicus had always maintained their medical records via Electronic Medical Record (EMR.) Mrs. Wilson stated that the medical assistant would go into the patient record and fill in the vitals and chief complaint. Mrs. Wilson stated CNP Marchenko would add everything else to the record and nobody would go into the office visit record after that. If an MA needed to add something like a prescription or note it would not be in the office visit portion of the record and it would have been classified as an "Addendum" in the system.

Mrs. Wilson said she would point out concerns to CNP Marchenko from time to time about things she would observe and he would respond with "Don't worry about it." Mrs. Wilson stated she recalled instances when patients reported "losing" their medication, and remembering the same patients reporting this previously. Mrs. Wilson said she would express her concern CNP Marchenko that these patients were possibly being untruthful. Mrs. Wilson said she would get the response from CNP Marchenko that "I will talk to them, this won't happen again." Mrs. Wilson stated all she could do was make him aware of these things but what was done after that and if it was addressed is unknown.

Mrs. Wilson stated that when the DEA showed up to execute their warrant she was surprised as to what was happening. Mrs. Wilson said she worked on printing out the records that were requested by the DEA. Mrs. Wilson said that once she printed out the records she placed them on CNP Marchenko's desk so he could review them for completeness. Mrs. Wilson stated she was never questioned by the DEA during this process. Mrs. Wilson told me she watched CNP Marchenko look over the records but at this point she stated he appeared to have "checked out."

Mrs. Wilson stated she watched CNP Marchenko sign off on all the records as to their completeness however during this time he did say "I don't need to do this" and was hesitant to look through the records. Mrs. Wilson said she told CNP Marchenko that he needs go through the records like the DEA is requesting so they can finish what they need to do. Mrs. Wilson stated CNP Marchenko signed off on all the records and verified the completeness of the files provided to the DEA.

Mrs. Wilson stated after the DEA left CNP Marchenko let all of the staff go except for her and one other employee. Mrs. Wilson said CNP Marchenko told her to cancel all appointments and then he left for a week and a half. Mrs. Wilson stated she and the other employee printed out records for all the patients that were coming for their records release and attempting to find them new places they could be provided services. Mrs. Wilson stated that a week and half after the DEA came she quit working at Medicus due to receiving threats from patients upset that CNP Marchenko could not see them. Mrs. Wilson did say CNP Marchenko did come back to the clinic the following week ready to begin providing primary care again but she advised him that she was done and started a new job shortly after. Mrs. Wilson stated that was the last time she talked to CNP Marchenko.

On October 10, 2018, we retained Dr. Craig Nairn as an expert witness to review the information we gathered during the investigation. Dr. Nairn's professional qualifications include board certification in anesthesiology and subspecialty certification in Pain Management. Dr. Nairn is also the current president of the New Mexico Pain Society. Dr. Nairn has practiced Pain Management since 1998 in a private practice setting.

Dr. Nairn was provided with multiple documents to review in order to offer his expert opinion on the prescriptive habits and the care provided to some of CNP Marchenko's patients. Dr. Nairn provided a report of his findings on April 13, 2019. His report reflects the following:

#### **Case 1 – M.G.**

Dr. Nairn stated there was insufficient medical history obtained by CNP Marchenko prior to treating M.G. The only history that was obtained was what M.G. told CNP Marchenko during the office visit. The validity of M.G.'s statements weren't confirmed through objective tests or record review. CNP Marchenko based his treatment with controlled substances solely on subjective information obtained from M.G.

Dr. Nairn stated there is no documentation of how dosages of the medications prescribed were calculated and no documentation that the PMP was reviewed prior to prescribing to M.G. The Morphine Milligram Equivalent (MME) was higher than recommended by the 2016 Centers for Disease Control (CDC) guidelines. Dr. Nairn also explains that M.G. was prescribed alprazolam without any documentation of the risk factors associated with taking this medication in combination with oxycodone. The PMP reflects the dosage of alprazolam was double of what was previously prescribed and again documentation that the PMP was reviewed is not present.

Dr. Nairn states in his professional opinion, CNP Marchenko should have obtained the PMP at the initial visit. Dr. Nairn stated he would not have prescribed anything to M.G. without more documented history and testing. Dr. Nairn goes on to say that if he did prescribe it would have been based off of the previously prescribed dosages that are reflected on the PMP.

Dr. Nairn states no other forms of pain management were documented as being discussed with M.G. Dr. Nairn stated it would be standard of care to try more conservative pain treatments before starting M.G. on opioids.

Dr. Nairn stated no diagnostic tests were ordered or requested from previous providers. Dr. Nairn advised CNP Marchenko should have ordered imaging of M.G.'s spine to determine an objective source for her pain that required opioid treatment.

Dr. Nairn concludes that in his professional opinion and to a reasonable medical probability that the treatment of M.G. by CNP Marchenko was substantially inadequate when compared to generally recognized standards within the discipline or industry. CNP Marchenko prescribed controlled substances without a documented objective diagnosis to substantiate the treatment nor did he try alternative pain treatments before initiating controlled substances.

## **Case 2 – J.B.**

Dr. Nairn stated there was insufficient patient history obtained for J.B. and minimal records from Molina in the record. Dr. Nairn said what was present in the file would not be enough to substantiate the history provided by J.B. There was no documentation about objective tests and no assessment for potential substance abuse in the file. Dr. Nairn stated his treatment of J.B. was solely based on subjective information obtained from J.B. There is no mention of other forms of pain management being discussed with J.B. Dr. Nairn stated the record reflected that J.B. advised CNP Marchenko of history of gunshot wounds, Post-Traumatic Stress Disorder (PTSD), and depression. Dr. Nairn said all of these things would have been red flags on considering whether or not to treat J.B. with opioids.

Dr. Nairn states there was insufficient documentation for the office visits conducted with J.B. There is no documentation of reviewing previous records or imaging, assessing for past pain treatments, a written treatment plan, rationale for dosages of medications prescribed, or reassessment of pain severity and function at each visit.

Dr. Nairn stated no imaging tests were ordered and there is no documentation that any were reviewed. There are several mentions of imaging done in the past but no documentation that these were reviewed. J.B. complained of back and hand pain but no imaging was present to support abnormalities in these areas that would have caused pain.

Dr. Nairn stated no urine drug screen (UDS) was conducted on J.B.'s first visit. On April 17, 2015, J.B.'s UDS resulted in a positive result for THC, methadone, and methamphetamine. This was listed in the visit note but never explained and CNP Marchenko continued to prescribe medication to J.B. Subsequent UDS collected on October 21, 2016, and March 21, 2017, were positive for buprenorphine but not the prescribed drugs, this was never mentioned in the record.

Dr. Nairn concludes in his professional opinion and to a reasonable medical probability that the treatment of J.B. by CNP Marchenko was substantially inadequate when compared to generally recognized standards within the discipline or industry. Dr. Nairn stated CNP Marchenko

prescribed controlled substances without a documented objective diagnosis to substantiate the treatment nor did he document J.B. having tried alternative pain treatments before initiating controlled substances. Dr. Nairn said there was significant discrepancies in the UDS that were never addressed. Also there was a large gap in J.B.'s care by CNP Marchenko from April 17, 2015, to October 21, 2016, that was never addressed. Dr. Nairn added that J.B.'s parole officer spoke with CNP Marchenko on March 20, 2017, and told him of J.B.'s drug abuse, to which CNP Marchenko advised that he would "fire" him as a patient. Records reflect that CNP Marchenko saw J.B. the following day and there was no notation in the record of this information. CNP Marchenko proceeded to prescribe J.B. the usual oxycodone and alprazolam on this visit.

### **Case 3 – J.B.A.**

Dr. Nairn stated the only medical history obtained for J.B.A. was from what she told CNP Marchenko. There was no outside records to substantiate the history and no documentation of objective tests. Dr. Nairn stated there was no assessment for potential for substance abuse and the physical exam doesn't address J.B.A.'s pain complaints. Dr. Nairn states CNP Marchenko based his treatment with alprazolam solely on subjective information obtained from J.B.A.

Dr. Nairn stated CNP Marchenko gave two prescriptions to J.B.A. for alprazolam but does not document his reasoning for prescribing this to her. There is no documentation of reviewing previous records or imaging, history of pain treatments, risk of substance abuse, written treatment plan, rationale for medication dosages prescribed or reassessment of pain severity and function at each visit. There is no documentation of review of the PMP or UDS in the record.

Dr. Nairn stated no diagnostic tests were completed to assess and substantiate the complaints of pain J.B.A. communicated. There was a note in the file stating records were requested but no documentation that records were received or reviewed by CNP Marchenko.

Dr. Nairn stated there was no documented UDS at the initial visit prior to CNP Marchenko prescribing alprazolam to J.B.A. The UDS on February 22, 2016, was positive for buprenorphine and opiates but the results did not come back until February 24, 2016, this was after the prescription had already been given to J.B.A. There is no mention of PMP reviews anywhere in the visit notes. There is one PMP dated May 8, 2015, in the chart which was ran on the initial office visit but no PMP for the office visit on February 22, 2016, even though it had been ten months since the previous visit. Dr. Nairn stated the one PMP in the file showed three small prescriptions for opioids from three different providers. Dr. Nairn said he would have asked J.B.A. about the circumstances surrounding the prescriptions, there is no documentation of this PMP and if it was discussed with J.B.A. Dr. Nairn stated if CNP Marchenko would have obtained a PMP for the office visit on February 22, 2016, as required by the state nursing board, he would have discovered that J.B.A. had filled three prescriptions by three different providers

one month before that visit. Dr. Nairn stated that these PMP's could have possibly revealed red flags for doctor shopping, drug diversion, or drug abuse. Dr. Nairn said these should have been addressed with J.B.A. and documented in the chart.

Dr. Nairn concludes it is his professional opinion and to a reasonable medical probability that the treatment of J.B.A. by CNP Marchenko was substantially inadequate when compared to generally recognized standards within the discipline or industry. CNP Marchenko prescribed controlled substances without a documented objective diagnosis to substantiate the treatment nor did he document the patient having tried alternative treatments before initiating controlled substances. Dr. Nairn said the chart documentation is lacking, and CNP Marchenko does not document any treatment plan or rationale for the prescriptions he gives to J.B.A.

#### **Case 4 – R.N.Y.**

Dr. Nairn stated the only medical history that was obtained was from R.N.Y. There was no documentation of the review of records and the only objective test was a lumbar x-ray which showed very minimal abnormality. There was no assessment for potential substance abuse even though R.N.Y. gave a past history of heavy alcohol and drug use and was being prescribed two separate benzodiazepines by a mental health provider. There is no documentation that any communication between this mental health provider and CNP Marchenko took place or if any records from previous providers were reviewed. There was no review of previous treatments for pain. Dr. Nairn said CNP Marchenko based his treatment with controlled substances solely on this subjective information.

Dr. Nairn stated there was no UDS completed on R.N.Y.'s initial visit before he was prescribed oxycodone. Dr. Nairn said this violates the New Mexico nursing board regulations. There was a UDS done on March 28, 2016, that was positive for cocaine, but this was not addressed in the notes and CNP Marchenko prescribed oxycodone at the subsequent office visit on April 25, 2016. There are PMP reports in the patient chart including one that was ran on the initial visit. There is no mention of review of the PMP anywhere in the visit notes. The PMP shows regular prescriptions for benzodiazepines prescribed by a mental health provider. Dr. Nairn said given the potentially dangerous interaction between these drugs and opioids he would have been reluctant to prescribe an opioid for R.N.Y. Dr. Nairn stated the history of regular benzodiazepine prescriptions would warrant further investigation before initiating opioid prescriptions.

Dr. Nairn concludes it is his professional opinion and to a reasonable medical probability that the treatment of R.N.Y. by CNP Marchenko was substantially inadequate when compared to generally recognized standards within the discipline or industry. CNP Marchenko prescribed controlled substances without a documented objective diagnosis to substantiate the treatment nor did he try alternative pain treatments before initiating controlled substances. CNP Marchenko did not document anything regarding R.N.Y.'s prescriptions for benzodiazepine medications or the

reason they were being prescribed by a mental health provider. CNP Marchenko did not make any notes regarding the positive cocaine result found in the March 28, 2016, UDS and he gave R.N.Y. another prescription for oxycodone on April 25, 2016, after these results were known.

#### **Case 5 – U.N.**

Dr. Nairn stated there was insufficient medical history obtained and the only information CNP Marchenko collected was obtained from U.N. There is mention in the initial visit note on August 17, 2015, that U.N. “had MRI of lumbar spine 2010” but there was no documentation of what the imaging showed nor was there documentation that CNP Marchenko reviewed it. There was no assessment for potential for substance abuse or for risks of taking controlled substances. There was no review of previous pain treatments. Dr. Nairn said there was insufficient documentation for each office visit and no documentation of reviewing previous records or imaging.

Dr. Nairn stated CNP Marchenko does not document anything about how he calculated the dosages of medications prescribed to U.N. Dr. Nairn said CNP Marchenko started U.N. on an oxycodone dosage that in his expert opinion was significantly higher than what a reasonable provider with similar training would prescribe to this patient. Dr. Nairn stated there were no other forms of pain management discussed with U.N. on the initial visit. CNP Marchenko did give U.N. injections on multiple occasions at subsequent visits.

Dr. Nairn stated CNP Marchenko did not order any diagnostic tests and in his professional opinion CNP Marchenko should have ordered an updated MRI to document a reason for pain prior to prescribing opioids.

Dr. Nairn stated CNP Marchenko did order UDS on a regular basis for U.N. but there is not any documentation of reviewing the results or discussing them with U.N. The UDS on February 2, 2016, was negative for everything and the urine creatinine was one (extremely diluted) which indicates it is most likely not urine. This is never addressed in the chart and there are no records of the specimen being sent for conformation to an outside lab. The UDS shows low creatinine levels on almost all occasions indicating possible dilution of urine.

Dr. Nairn concludes it is his professional opinion and to a reasonable medical probability that the treatment of U.N. by CNP Marchenko was substantially inadequate when compared to generally recognized standards within the discipline or industry. Dr. Nairn stated CNP Marchenko should have been aware of a PMP alert dated March 24, 2015, which notes “Evidence shows, and Uriel confirms he stole prescriptions blanks and created fraudulent RX’s for multiple controlled substances for himself as well as several others. DEA currently investigating.” CNP Marchenko spoke with DEA Agent J. Olsen on August 17, 2015, and she warned him of the history of U.N. with addiction and forgeries. CNP Marchenko ignored this information. CNP Marchenko did not act on the irregular UDS noted above. Dr. Nairn said a reasonable provider with similar training,

experience, and licensure would not have prescribed U.N. any controlled substances after this date.

Dr. Nairn concludes it is his professional opinion and to a reasonable medical probability that the treatment of U.N. by CNP Marchenko was not medically necessary when compared to generally recognized standards within the discipline or industry. Dr. Nairn said a reasonable provider with similar training, experience, and licensure would not have prescribed U.N. any controlled substances after being presented with the information noted above.

In summary, CNP Andrei Marchenko was the provider for the above mentioned Medicaid recipients. Medicaid claims were submitted for the care CNP Marchenko provided these individuals and these claims were confirmed to be paid to CNP Marchenko's practice "Medicus." Patient files were provided by CNP Marchenko, and verified to be complete by CNP Marchenko. These files were reviewed by Dr. Nairn along with the documented interviews conducted by DEA and all pertinent investigative reports.

In Dr. Nairn's expert opinion, CNP Marchenko provided substantially inadequate treatment when compared to generally recognized standards within the discipline or industry, to all five patients contained within his report (M.G., J.B., J.B.A, R.N.Y, and U.N.) The total amount of claims submitted to Medicaid for all of the office visits conducted for these patients by CNP Marchenko is over \$2,500.

In the case of M.G., Dr. Nairn stated CNP Marchenko provided substantially inadequate treatment to M.G. when compared to generally recognized standards within the discipline or industry. M.G. was found unresponsive one month after her last office visit with CNP Marchenko. The OMI report states M.G.'s cause of death was "Toxic effects of multiple drugs (heroin, oxycodone, and methamphetamine)." Records reflect CNP Marchenko did prescribe oxycodone to M.G. during her last office visit with him. In addition, after the death of M.G., her sister represented herself as M.G. on multiple occasions in order to receive prescriptions. CNP Marchenko failed to recognize she was not his patient and billed claims to Medicaid for those visits.

In the case of J.B., Dr. Nairn stated CNP Marchenko provided substantially inadequate treatment to J.B. when compared to generally recognized standards within the discipline or industry. This substantially inadequate treatment contributed to the physical harm of J.B. on two occasions. J.B. has two documented incidents of overdosing on medication that was prescribed by CNP Marchenko (October 24, 2016, and March 22, 2017.) On both occasions it is documented that J.B. was displaying signs of overdose and his cognitive ability was hindered. J.B. was transported to the hospital on both occasions.

In the case of J.B.A., Dr. Nairn stated CNP Marchenko provided substantially inadequate treatment to J.B.A. when compared to generally recognized standards within the discipline or industry. Law enforcement responded to a call for service in which J.B.A. was said to be under cardiac arrest. Life saving measures were unsuccessful. The OMI report stated J.B.A.'s cause of

death was "Toxic effects of multiple drugs (alprazolam, oxycodone, and oxymorphone)." This incident occurred two days after J.B.A.'s last office visit with CNP Marchenko. Records reflect alprazolam was prescribed to J.B.A. by CNP Marchenko during this office visit.

In the case of R.N.Y., Dr. Nairn stated CNP Marchenko provided substantially inadequate treatment to R.N.Y. when compared to generally recognized standards within the discipline or industry. R.N.Y. was found unresponsive at his residence on April 29, 2016, four days after his last office visit with CNP Marchenko. The OMI report stated R.N.Y.'s cause of death was cocaine, oxycodone, and diazepam poisoning. Records reflect CNP Marchenko prescribed oxycodone during the office visit on April 25, 2016.

In the case of U.N., Dr. Nairn stated CNP Marchenko provided substantially inadequate treatment to U.N. when compared to generally recognized standards within the discipline or industry. Several red flags for drug diversion and substance abuse were ignored by CNP Marchenko during the time he treated him. CNP Marchenko disregarded information within the PMP as well as warnings from the DEA that U.N. had a history of forging prescriptions and drug abuse.

Dr. Nairn concluded that CDC Guidelines for prescribing opioids for Chronic Pain and the New Mexico Board of Nursing Rules and Regulations for the Management of Chronic Pain with Controlled Substances, were not followed, placing the above mentioned patients at high risk for overdose and death.

contrary to Sections(s)

30-44-7(F) three counts - 30-2-3(B) (in the alternative) 3 counts, 30-44-7(D) two counts, 30-44-07(A) (2) [NMSA 1978] (set forth applicable section number of New Mexico statute, municipal code, or ordinance, and date of adoption).

**I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FACTS SET FORTH ABOVE ARE TRUE TO THE BEST OF MY INFORMATION AND BELIEF. I UNDERSTAND THAT IT IS A CRIMINAL OFFENSE SUBJECT TO THE PENALTY OF IMPRISONMENT TO MAKE A FALSE STATEMENT IN A CRIMINAL COMPLAINT.**

Ted Martinez

Complainant

Special Agent

Title (if any)

Approved:

\_\_\_\_\_  
Title

(Optional: Criminal Form 9-207A NMRA is available in lieu of completing this section of Criminal



*Form 9-201 NMRA.)*

**If Probable Cause Determination Required:**

☐ Probable Cause Found

☐ Probable Cause Not Found, and Defendant Released from Custody

Judge: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

[As amended, effective September 1, 1990; April 1, 1991; November 1, 1991; as amended by Supreme Court Order No.13-8300-020, effective for all cases pending or filed on or after December 31, 2013.]