

Cause No. 716948

STATE OF TEXAS

§

IN THE COUNTY COURT

§

vs.

§

AT LAW NO. 8

§

JOHN DOE

§

BEXAR COUNTY, TEXAS

MOTION FOR HIPAA RELEASE ORDER

Comes now, JOHN DOE, Defendant, by and through his undersigned counsel and moves this Honorable Court to order the release of certain Protected Health Information ("PHI") covered by the Health Insurance Portability and Accountability Act ("HIPAA") to the attorneys of record from the providers listed below and for good cause would show:

I. Factual Basis

Defendant was arrested _____ and stands charged with _____. Trial in this cause is set for Jan. 30, 2022. Defendant requires the PHI requested for use and review by Defendant's disclosed expert, Dr. _____, a licensed psychologist in the state of Texas. Dr. _____ requires sufficient time to evaluate the requested materials, form his opinions, advise Defendant's counsel, and prepare to testify. The requests for information are tailored to Dr. _____'s needs, for relevance to cross-examination of other experts in this cause whose opinions are based on the PHI requested, and for relevance to material issues in this cause, specifically the competency and credibility of the child complaining witness, as well as the alleged mental or emotional injuries that may have been caused by Defendant's alleged conduct. Such evidence is reasonably likely to tend to make relevant factual allegations more or less

likely, be useful for impeachment of various witnesses, and to be relevant at sentencing as mitigation evidence.

II. Applicable Law

HIPAA allows the release of PHI by a covered entity, such as a mental health provider, without a written authorization from an individual as defined by 45 CFR 164.508 (a private person who provided the information for a medical or mental health care purpose) in response to a court order or administrative order. 45 CFR 164.512(e)(l)(i). The covered entity may only release information that is expressly included in the order and to the individuals or entities named in the order. The covered entity must inform the individual of the release.

Unlike a subpoena or other judicial process not accompanied by a court order, the covered entity is not required to receive, and the requester is not required to provide, "satisfactory assurance" that the individual whose PHI is sought to be disclosed has been given notice or that a qualified protective order has been obtained. *See* 45 CFR 164.512(e)(l)(iii)-(v). Such satisfactory assurances typically require disclosure to the covered entity of information about the litigation in question, as well as communications between counsel, a protective order entered by a court, notice to the individual prior to release of the PHI, and other processes the covered entity may deem appropriate. Such processes can result in substantial delay.

However, an order to release PHI may include a protective order such as that required for the release of PHI through a subpoena not accompanied by a court order. Such a protective order should (1) prohibit the parties from using or disclosing the

information for any purpose beyond the litigation for which it was disclosed and (2) order the parties to destroy or return the released information after the litigation is concluded. 45 CFR 164.512(e)(1)(v.).

III. Relief Requested

Defendant requires the information requested because the information is relevant or reasonably expected to be relevant to material issues in this cause including _____. Respondent moves the Court to order the release of the following PHI of the parties and children subject of this suit ("individuals") from the providers listed below, within 14 days of presentment of the order:

1. **Information Requested:**

- a. Raw data from any psychological assessments, surveys, or tests performed on the individuals.
- b. Therapy or session notes related to the individuals.
- c. Information disclosed to or received from other mental health or medical professionals for potential use in forming their opinions or testimony related to the instant case.
- d. Reports prepared for use in the instant litigation, including drafts of any such reports that were provided to Petitioner's counsel only.
- e. Intake questionnaires or forms provided to either party.
- f. Any other documents, recordings, drawings, photographs, or other materials provided to the covered entities in connection with mental health treatment of, assessment of, or the formation of opinions related to the mental health of the individuals.

2. **Providers/Covered Entities:**

Defendant further moves the Court to enter a protective order restraining the parties, counsel, and their agents, including consulting or testifying experts, from disclosing any PHI disclosed under order of this Court outside the instant litigation and that all such information be destroyed 45 days after a final order is entered or after the pendency of any appeal in this cause.

Defendant prays that the Court grant the Motion for HIPAA release order and other such relief as may be reasonable.