

CAUSE NO. 1625353/1625351/1625352

STATE OF TEXAS	§	IN THE 176 <sup>th</sup> DISTRICT COURT
	§	
V.	§	
	§	
MARILYN JOY WILKES	§	HARRIS COUNTY, TEXAS

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STATE'S MOTION FOR PROTECTIVE ORDER

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THE STATE OF TEXAS moves for an order protecting records related to counseling treatment provided to N.N. (hereinafter "PATIENT").

I.

The State of Texas requests that the Court take judicial notice of the contents of its file in the instant case. *See* TEX. R. EVID. 201(b), (d).

The State of Texas obtained medical records from THE CHILDREN'S ASSESSMENT CENTER related to the treatment of PATIENT. Counsel for the defendant has made a discovery request for these records pursuant to Article 39.14(a).

The State will make these records available to counsel for the defendant. In deference to the medical privacy rights of PATIENT, however, the State moves for issuance of a protective order governing the use and dissemination of these records.

II.

The use and dissemination of "protected health information" in judicial proceedings without the authorization of the patient is governed by 45 C.F.R. § 164.512(e)(1), which provides:

A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

...

- (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:

...

- (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that **reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.**

45 C.F.R. §164.512(e)(1) (emphasis added). Paragraph (e)(1)(v) provides:

For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, **an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:**

- (A) **Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and**
- (B) **Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.**

45 C.F.R. §164.512(e)(1) (emphasis added).

A proposed order that meets the standards of 45 C.F.R. §164.512(e)(1)(v) is attached to this motion.

### III.

Service has been accomplished by facsimile/mail/email/hand-delivery to counsel for the defendant on January 7, 2020.

**THEREFORE**, for the foregoing reasons, the State respectfully requests that the Court grant the attached protective order.

Respectfully submitted,

/s/Micala Clark

**MICALA CLAK**

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State Bar of Texas No. 24095639

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**STATE OF TEXAS**

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**IN THE 176<sup>th</sup> DISTRICT COURT**

**HARRIS COUNTY, TEXAS**

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**PROTECTIVE ORDER**

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On this date, the Court considered the State's motion for protective order and the defendant's response, if any. The Court GRANTS the State's motion for a protective order and ORDERS as follows:

1. The parties and their attorneys are hereby authorized to receive, subpoena and transmit "protected health information" pertaining to PATIENT to the extent and subject to the conditions outlined herein.
2. For the purposes of this qualified protective order, "protected health information" shall have the same scope and definition as set forth in 45 C.F.R. § 160.103 and 164.501. Protected health information includes, but is not limited to, health information, including demographic information, relating to either (a) the past, present, or future physical or mental condition of an individual, (b) the provision of care to an individual, or (c) the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.
3. All "covered entities" (as defined by 45 C.F.R. § 160.13) are hereby authorized to disclose protected health information pertaining to PATIENT to attorneys representing the State of Texas and the Defendant in the above-captioned litigation.

4. Counsel for the parties shall be permitted to use or disclose the protected health information of PATIENT for purposes of prosecuting or defending this action including any appeals of this case. This includes, but is not necessarily limited to, disclosure to co-counsel, experts, consultants, court personnel, court reporters, copy services, trial consultants, and other entities or persons involved in the litigation process.

5. Pursuant to Article 39.14(f), Texas Code of Criminal Procedure, counsel for the parties are specifically instructed that a defendant, witness, or prospective witness is allowed to view the PATIENT's protected health information only under the following conditions:

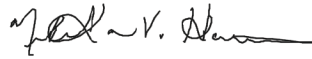
- a. The defendant, witness, or prospective witness may not have copies of the PATIENT'S protected health information.
- b. Before allowing the defendant, witness, or prospective witness to view the PATIENT's protected health information, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the PATIENT's protected health information.

6. Prior to disclosing PATIENT's protected health information to persons involved in this litigation, counsel shall inform each such person that PATIENT's protected health information may not be used or disclosed for any purpose other than this litigation. Counsel shall take all other reasonable steps to ensure that persons receiving PATIENT's protected health information do not use or disclose such information for any purpose other than this litigation.

7. Within 45 days after the conclusion of the litigation including appeals, the parties, their attorneys, and any person or entity in possession of protected health information received from counsel pursuant to paragraph four of this Order, shall return PATIENT'S protected health information to the covered entity or destroy any and all copies of protected health information pertaining to PATIENT, except that counsel are not required to secure the return or destruction of protected health information submitted to the Court.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signed:  
1/7/2020



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**JUDGE PRESIDING**  
176<sup>th</sup> District Court  
Harris County, Texas



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 30, 2021

Certified Document Number: 88798034 Total Pages: 6

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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