

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:22-cr-00201-WWB-LHP

EVAN EDWARDS
a/k/a Ian Heringa

**JOINT MOTION FOR ORDER DIRECTING THE RELEASE OF
DEFENDANT'S MEDICAL RECORDS**

The United States of America by Roger B. Handberg, United States Attorney for the Middle District of Florida, and A. Brian Phillips, counsel for defendant, Evan Edwards, a/k/a Ian Heringa, hereby move the Court for entry of an order directing the defendant's medical provider, Orlando Regional Medical Center and its employees and/or agents (together, the "Medical Provider") to release the defendant's medical records forthwith, and states in support as follows:

I. Relevant Procedural Background

1. On December 7, 2022, the defendant was charged with violation of conspiracy to commit bank fraud, bank fraud, and visa fraud, in violation of 18 U.S.C. §§ 1344, 1349, and 1546, respectively. Doc. 1.

2. On December 14, 2022, the defendant was arrested, transported to the federal courthouse, and scheduled for his initial appearance before United States Magistrate Judge David A. Baker. However, the defendant was unable to participate

in an initial appearance due to reported medical issues.¹ The United States Marshals Service ultimately transported the defendant to the Medical Provider, where he has since remained. *See* Doc. 21 (ordering the defendant into the custody of USMS for medical evaluation).

3. On December 27, 2022, a portion of the defendant's initial appearance was held before United States Magistrate Judge Embry J. Kidd.² During the initial appearance, the defendant provided only non-verbal responses to the Court's questions. Defendant's counsel reported an inability to decipher whether the defendant's limitations were a result of physical/medical issues or a result of competency issues. Because defense counsel does not have access to the defendant's medical records and has not been provided any updates or reports from the Medical Provider, defense counsel is unable to determine if he has concerns about the defendant's competency.³

4. In order to move this case forward and determine whether the defendant requires a competency evaluation, the United States and defense counsel jointly request an order directing the Medical Provider to release to the United States and defense counsel the medical records detailed in Exhibit 1 (the "Medical Records").

¹ The defendant's initial counsel raised potential competency concerns at the time of the first attempted initial appearance.

² The defendant and his counsel appeared via teleconference from the defendant's hospital room. Due to the defendant's physical and/or mental limitations and non-verbal responses, the Court was unable to move forward with the defendant's arraignment and unable to complete the initial appearance, which has been continued to December 28, 2022.

³ Defense counsel reported that a medical release waiver has not been signed by the defendant.

II. Memorandum of Law

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) controls when and how “covered entities” may disclose protected health information. *See generally* 45 C.F.R. pts. 160-164. HIPAA prohibits covered entities⁴ from disclosing or using protected health information absent a specific provision of the HIPAA regulations which permits a disclosure. 45 C.F.R. § 164.502. Generally, the HIPAA privacy rule requires patient consent for all disclosures of protected health information by a covered entity, unless the rule explicitly permits disclosure. *Id.* One such instance where the rule permits disclosure of protected health information without patient consent is if the disclosure is “required by law.” The rule defines “required by law” as any “mandate contained in law that compels a covered entity to make a disclosure of protected health information and that is enforceable in a court of law.” 45 C.F.R. § 164.501. Included in the definition of “required by law” are court orders. *Id.*

Specifically, the rule provides that “[a] covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.” 45 C.F.R. § 164.512(a)(1). Additionally, a covered entity must meet certain requirements for uses or disclosures required by law. 45 C.F.R. § 164.512(a)(2). Hence, even if a disclosure is otherwise required by law, it must

⁴ Covered entities include, but are not limited to, a health plan, a healthcare clearinghouse, and a health care provider. *See* 45 C.F.R. § 160.103.

nevertheless meet the conditions contained in a provision of the HIPAA rule relevant to certain situations, for example: § 164.512(e) (disclosures in judicial or administrative proceedings; or § 164.512(f) (disclosures for law enforcement). Specifically, under § 164.512(f), “[a] covered entity may disclose protected health information in the course of any judicial or administrative proceeding” provided that such disclosure is made “[i]n response to an order of a court or administrative tribunal” and “provided that the covered entity discloses only the protected health information expressly authorized by such order.” 45 C.F.R. § 164.512(f).

Here, a court order requiring the Medical Provider to release the Medical Records to the United States and defense counsel in the course of this judicial proceeding would permit the Medical Provider to disclose the defendant’s protected health information under HIPAA without the defendant’s consent. *See, e.g., United States v. Wilson*, 2020 WL 1429497, at *3 (E.D. Mich., 2020) (“the protections afforded by HIPAA do not come into play because an exception applies. Disclosure of information by way of a court order in a judicial proceeding triggers application of the exception in subsection (e)(1), without a release of information from [the defendant]”); Such release of the defendant’s Medical Records is needed in this case in order to inform the parties regarding the appropriate path forward, including whether the defendant’s competency is at issue.

III. Conclusion

The United States and counsel for the defendant respectfully request that this Court enter an Order requiring the Medical Provider to release the defendant’s

Medical Records forthwith to defense counsel (A. Brian Phillips) and the United States (through the undersigned AUSA).

Respectfully submitted,

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EXHIBIT 1

The medical records to be released by the Medical Provider, Orlando Regional Medical Center, include the following:

Any and all medical records, reports, results of examinations or tests, doctor's notes, record of prescription medications and other documents related to patient Evan Edwards a/k/a Ian Heringa (DOB XX/XX/1958) from December 14, 2022 (the date of admission to the Medical Provider) through the date of his release from the Medical Provider.

U.S. v. EVAN EDWARDS ET AL.

Case No. 6:22-cr-201-WWB-LHP

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2022, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

A. Brian Phillips
Counsel for Defendant (Evan Edwards)

Charles E. Taylor
Counsel for Defendant (Josh Edwards)

/s/ Kara M. Wick
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