

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

**GOVERNMENT’S UNOPPOSED, TIME SENSITIVE 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, hereby moves the Court for entry of an order directing (1) that the defendant, through his third party custodian, provide the identity of his medical provider(s); and (2) that the defendant’s medical provider(s) and its/their employees and/or agents (together, the “Medical Provider”) provide the defendant’s medical records required by USMS, and states in support as follows:

BACKGROUND

1. Evan Edwards (the “Defendant”) has been found incompetent to stand trial under 18 U.S.C. § 4241(b) and this Court has ordered treatment pursuant to 18 U.S.C. § 4241(d). Doc. 136.

2. The Defendant is under the care of his wife, Mary Jane Edwards (“Ms. Edwards”), who is the third party custodian in this case. Doc. 114.

3. The BOP has set the voluntary surrender date for the Defendant as May 15, 2024 by 2:00 p.m. The designated facility is FMC Devens. As requested by the

Defendant, USMS is facilitating the Defendant's transport to FMC Devens. Docs. 139, 145. However, in order to transport the Defendant, JPATS requires certain medical information (the "Medical Information"), which includes the information listed on Exhibit A attached hereto, no less than one week in advance of the voluntary surrender date. Thus, the Medical Information must be provided to JPATS on or before May 8, 2024.

4. Pursuant to this Court's Order dated March 28, 2024 (the "March 28, 2024 Order"), the Defendant is required to "cooperate in the collection of all necessary information by the USMS for the purposes of obtaining medical clearance to be transported." Doc. 145.

5. USMS has been diligently requesting the Medical Information from the Defendant through defense counsel. To date, USMS has received no Medical Information from the Defendant.

6. On April 17, 2023, and after significant efforts by defense counsel to secure the requested records, defense counsel informed the undersigned that he would provide the records as soon as he had them, and that he had made the request for the records to Defendant's wife (the third-party custodian in this case). According to defense counsel, the Defendant's wife reported that she was waiting on the information from the Defendant's health care providers.

7. On April 24, 2023, the undersigned spoke with defense counsel, who requested that the undersigned and Supervisory Deputy U.S. Marshal meet with him and Ms. Edwards the next day via Zoom to discuss the need for the Medical

Information.

8. On April 25, 2023, the undersigned, Penelope Knox, and defense counsel met via Zoom. Defense counsel advised at that time, however, that Ms. Edwards was refusing to participate in the meeting. In the Government's view, Ms. Edwards is not complying with the March 28, 2024 Order requiring her cooperation with the collection of medical information.

9. If the required medical records are not timely received, then USMS will be unable to transport the Defendant for the May 15, 2024 voluntary surrender date, and the facility will likely open the spot to another patient. This will cause unnecessary delay in providing the Defendant with competency restoration treatment.

10. Therefore, the United States hereby requests that the Court enter an Order (1) directing the Defendant, through his third party custodian, to submit to the Court the name of his Medical Provider on or before April 29, 2024; and (2) directing the Medical Provider (once identified) to provide the Medical Information to USMS on or before May 3, 2024. This will allow USMS time to confirm that all necessary Medical Information has been provided in advance of the May 8, 2024 JPATS deadline, and to request additional records if needed.

11. On April 25, 2024, the undersigned conferred with defense counsel, Brian Phillips, who has no objection to the relief sought herein.

MEMORANDUM

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 entities¹ 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 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 §

¹ 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.

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 Information 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 Information is needed in this case to facilitate the Defendant’s transport to FMC Devens for competency restoration treatment.

CONCLUSION

The United States, without objection from counsel for the Defendant, respectfully request that this Court enter an Order requiring (1) that the Defendant, through his third party custodian, submit to the Court the name of his Medical Provider on or before April 29, 2024; and (2) that the Medical Provider provide the Medical Information on or before May 3, 2024. This will ensure that USMS has the information required by JPATS to transport the Defendant by the voluntary surrender

date of May 15, 2024.

WHEREFORE, the United States respectfully requests that this Court enter an Order directing (1) the Defendant, through the third party custodian, Mary Jane Edwards, to submit the name of his Medical Provider to the Court on or before April 29, 2024; and (2) the Medical Provider to provide the Medical Information to USMS (through Penelope Knox) on or before May 3, 2024.

Respectfully submitted,

ROGER B. HANDBERG
United States Attorney

By: /s/ Kara M. Wick
Kara M. Wick
Assistant United States Attorney
Florida Bar No. 0085578
400 W. Washington Street
Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
Fax: (407) 648-7643
E-mail: Kara.wick@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2024, a true and correct copy of the foregoing was filed via the CM/ECF filing system, which will send service to all counsel of record:

A. Brian Phillips, Esq.

/s/ Kara M. Wick
Kara M. Wick
Assistant United States Attorney
Florida Bar No. 0085578
400 W. Washington Street
Suite 3100
Orlando, Florida 32801
Telephone: (407) 648-7500
Fax: (407) 648-7643
E-mail: Kara.wick@usdoj.gov