

IN THE MAGISTRATE COURT OF _____ COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.

CASE NO. 09-M-_____

_____ /

Defendant.

ORDER

On this day came the State of West Virginia, by _____, Assistant Prosecuting Attorney, with a request for an Order of this Court authorizing the medical professionals in this case involved in the treatment of the defendant, _____, SSN _____, on or about _____, 2009, to provide protected health information, to discuss the same with counsel, and, if necessary, to testify in this matter.

WHEREUPON this Court was informed that regulations of the United States Department of Health and Human Services has promulgated regulations pursuant to the Health Insurance Portability and Accountability Act at 45 C.F.R. Parts 160 and 164 relating to patient privacy prohibit medical professionals, health care entities and their supporting staff and employees from disclosing the nature of any treatment absent Order of this Court; and

WHEREUPON this Court was informed that medical professionals or their office staff cannot even confirm or deny the existence of any patient, treatment, or protected health information under the regulations and the Act absent patient consent or proper judicial command; and

WHEREUPON this Court was informed that the provisions of 45 C.F.R. '164.512(e, f), which went into effect on April 14, 2003, permit disclosure of such records without notification to the patient or the patient=s consent for use in judicial proceedings and for law enforcement purposes; and

WHEREUPON this Court was further informed that the State of West Virginia desired to receive protected health information, both oral and written, from the _____ Hospital and their officers, agents, clerks, servants, and employees relating to the treatment of the said _____ relating to blood alcohol testing by the aforesaid entities and persons commencing on or about _____, 2009, and that such evidence and testimony will be sought to be admitted in trial; and

WHEREUPON this Court was further informed that 45 C.F.R. '164.512(e)(1)(i) permits disclosure of protected health information in response to an Order describing with particularity protected health information sought for use in judicial or administrative proceedings; and

WHEREUPON this Court was further informed that 45 C.F.R.

'164.512(f)(1)(ii)(A) authorizes disclosure of protected health information in response to an Order by a judicial officer to law enforcement officials of the State of West Virginia; and

WHEREUPON this Court was informed that the State of West Virginia will be unable to prosecute this criminal action effectively without such protected health information, nor will the State of West Virginia be able to provide adequate discovery without the provision of such protected health information; and

WHEREUPON this Court was informed that under 45 C.F.R. 164.501, the counsel for the State of West Virginia are Alaw enforcement officials@ who may receive such protected health information since, under the regulation, a law enforcement official is defined as an officer or employee of a State or political subdivision of a State empowered by law to,

Aprosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.@

WHEREFORE this Court, having considered the foregoing, hereby ORDERS that _____ Hospital and their principles, officers, agents, clerks, servants, and employees shall be permitted and authorized pursuant to 45 C.F.R. '164.512(e,f) to disclose to the State of West Virginia and the defendant=s counsel protected health information, whether in writing, orally, or in pretrial interviews and testimony, relating to the hospitalization and treatment of _____ commencing on or about _____, 2009,

relating to her blood alcohol testing; and

ORDERS that any person who receives any protected health information pursuant to the provisions of this Order or any subpoena relating thereto shall be PROHIBITED, pursuant to the Health Insurance Portability and Accountability Act and the regulations promulgated by the United States Department of Health and Human Services thereunder, from using such protected health information for any purpose other than in this prosecution; and

ORDERS that, upon completion of the prosecution of this matter and after the passage of the period of appeal, the State of West Virginia and the defendant shall either return said protected health information to the said Hospital or destroy such protected health information; and

ORDERS that this Order shall be in effect until such time as this criminal proceeding shall come to an end, whether upon dismissal or exhaustion of appeal and that this Order shall be in effect and apply to all protected health information relating to this specific injury and this victim; and

ORDERS that the said _____ Hospital shall deliver said records, together with the identities of the phlebotomist who drew blood and the medical laboratory technician who tested the blood, to _____, Assistant Prosecuting Attorney, Geary Plaza, 700 Washington Street, East, Fourth Floor, Charleston, West Virginia, 25301, within twenty (20) days of the deliver of this

Order; and

ORDERS that true copies of this Order shall be delivered by the Clerk of this Court to the following persons:

a. Medical Records Custodian, _____ Hospital, Charleston, West Virginia; and

b. Counsel of record.

ENTERED this ____ day of _____, 2009.

MAGISTRATE

Prepared by:

ASSISTANT PROSECUTING ATTORNEY