

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1412-2014
:
vs. :
:
:
RASHAWN WILLIAMS, :
Defendant :

OPINION AND ORDER

This matter came before the court on Defendant’s motion to quash subpoena for medical records and suppress them on the basis that the Commonwealth allegedly failed to comply with the Health Insurance Portability and Accountability Act (HIPAA) and/or failed to properly comply with the Uniform Act to Secure Out of State Witnesses (42 Pa.C.S. §5961, et seq). The relevant facts follow.

On June 1, 2014, Defendant Rashawn Williams allegedly shot and killed Aaron Lowry outside the Lamplight Hookah Lounge on West Fourth Street in Williamsport Pennsylvania and then fled to High Point, North Carolina. When U.S. Marshals attempted to apprehend Defendant in High Point, Defendant allegedly fled from an apartment and was pursued into a wooded area by a law enforcement canine. Defendant sustained injuries that included dog bites to his face and left ankle. He was taken to High Point Regional UNC Health Care (hereinafter “the Hospital”) where his injuries were treated.

Having been charged with an open count of homicide and related offenses, Defendant was returned to Lycoming County and incarcerated in the Lycoming County Prison.

On October 6, 2014, the attorney for the Commonwealth sent a subpoena to

the Hospital requesting Defendant's medical records for the dates 6/4/2014-6/8/2014. The subpoena also noted that Defendant was a fugitive wanted for homicide charges in Lycoming County, Pennsylvania, and he was arrested by U.S. Marshals in High Point and brought to the Hospital for treatment. After receiving the subpoena, the attorney for the Hospital spoke with the attorney for the Commonwealth by telephone and outlined the procedure that the Commonwealth needed to follow before the records would be released. Based on that telephone conversation, the Commonwealth presented President Judge Nancy Butts with a petition for a certificate directing an out-of-state witness to produce medical records, as well as a praecipe. Judge Butts signed the certificate, which requested that a North Carolina judge compel the record's custodian to release certified medical records to the Lycoming County District Attorney's Office. A judge in Guilford County, North Carolina issued an order directing the record's custodian to deliver Defendant's medical records to the Lycoming County District Attorney's office. The subpoena, petition, praecipe, certificate and court order are attached to the Commonwealth's brief as exhibits.

When Defendant's counsel was notified that the Commonwealth had obtained an order for the release of Defendant's medical records, counsel filed a motion to quash. The motion not only requested suppression of the medical records but also that the records be sealed until the court could determine whether the Commonwealth properly obtained them. Judge Butts directed the Commonwealth to turn the records over to the court, which has held them pending resolution of the motion.

Defendant first asserts that the Commonwealth violated or failed to comply with HIPAA by requesting Defendant's medical records pursuant to the Uniform Act to

Secure Out of State Witnesses. Specifically, Defendant contends he was entitled to notice and an opportunity to be heard prior to the Commonwealth receiving his medical records pursuant to 45 C.F.R. §164.512(e). The court cannot agree.

First, the Commonwealth cannot violate HIPAA. Although Defendant's medical records meet the definition of "health information," the Commonwealth is not a "covered entity." The term covered entity is: (1) a health plan; (2) a health care clearinghouse; or (3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter. 45 C.F.R. §160.103. A district attorney's office is not a covered entity. *State v. Downs*, 923 So.2d 726, 731 (La. App. 1 Cir. 2010).

Second, the notice provisions in section 164.512(e)(2)(ii) do not apply in this case. The Hospital did not disclose Defendant's medical records until after it received an order of court. The notice provisions of section 164.512(e)(2)(ii) only apply if the covered entity responds "to a subpoena, discovery request, or other lawful process, **that is not accompanied by an order of a court** or administrative tribunal." 45 C.F.R. §164.512(e)(2)(ii)(emphasis added).

Instead, the court finds that the applicable provisions are the ones related to disclosure for law enforcement purposes contained in section 164.512(f), which states in relevant part:

A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) Permitted disclosures: Pursuant to process and as otherwise

required by law. A covered entity may disclose protected health information:

(ii) In compliance with and as limited by the relevant requirements of:

(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer.

45 C.F.R. §164.512(f)(1)(ii)(A).

The definition of law enforcement official includes county prosecutors and assistant district attorneys. 45 C.F.R. §164.103 (“Law enforcement official means an officer or employee of any agency or authority of ... a political subdivision of a State or territory ... who is empowered to ... [p]rosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.”). There is no notice requirement under this law enforcement exception. See *United States v. Elliott*, 676 F. Supp. 2d 431, 438 (D. Md. 2009)(the judicial and administrative proceedings exception (45 C.F.R. §164.512(e)) does require that in certain circumstances that notice be provided to the person whose records are being sought; the law enforcement exception contains no such requirement). Moreover, the Commonwealth complied with the requirements of this section; it obtained a court order for release of the records and the paperwork that resulted in the issuance of the order limited the records sought to those related to the injuries Defendant sustained when he was apprehended between June 4 and June 8, 2014.

The court also rejects Defendant’s allegation that the Commonwealth was on a fishing expedition. Defendant was charged with criminal homicide, flight to avoid apprehension, and other related offenses. He fled to High Point, North Carolina, where he was apprehended by authorities and treated at the Hospital. Defendant’s flight and conduct

during his apprehension is clearly relevant to the charge of flight to avoid apprehension, trial or punishment. It also is relevant and admissible to show Defendant's consciousness of guilt for criminal homicide and the other related charges.

During his flight and apprehension, Defendant sustained injuries. It was reasonable for the Commonwealth to expect the records to contain information to support its contention that Defendant fled from the authorities and that such flight evinced consciousness of guilt. The injuries themselves and the manner in which they were sustained could support its contentions. Moreover, medical personnel typically take a history and ask a patient how he sustained his injuries. Statements made for purposes of medical diagnoses and treatment and statements of an opposing party are recognized exceptions to the hearsay rule. Pa.R.E. 803(4) and (25). Therefore, it was reasonable for the Commonwealth to expect that evidence relevant to the charges in this case would be in Defendant's medical records. In fact, there are multiple references to dog bites to the patient's face and left ankle, and a nurse's note indicates that the patient was brought in by the High Point Police Department (HPPD) for a dog bite by a police dog. More importantly, however, there is a chart which, in addition to the information that was contained in the nurse's note, indicates that Defendant stated "he was hiding in the bushes when he was bitten by the dog and has a lot of scrapes to the face and body from that."

Generally for medical records or any other business record to be admissible at trial, the records custodian must testify or certify the authenticity of the records. Pa.R.E. 901; Pa.R.E. 902(11). Therefore, as stated in the certificate signed by Judge Butts, the Hospital's records custodian, Karen Gammons, was a necessary and material witness in the

reproduction of the certified medical records.

Finally, even if there was a violation of HIPAA, Defendant would not be entitled to the remedy of suppression. HIPAA violations are punished through the imposition of civil and criminal penalties against covered entities. 42 U.S.C. §§1320d-5, 1320d-6. There is no right to private action or relief for HIPAA violations. *Dominic J. v. Wyoming Valley West High School*, 362 F. Supp. 2d 560, 573 (M.D. Pa. 2005). Furthermore, although the Pennsylvania appellate courts have not addressed this issue, numerous other jurisdictions have held that suppression is not an appropriate remedy for HIPAA violations. *Elliott*, supra; *United States v. Zamora*, 408 F.Supp.2d 295 (S.D. Tex. 2006); *State v. Carter*, 23 So.3d 798, 800-801 (Fla. Ct. App. 2009); *State v. Yenzler*, 195 P.3d 271 (Kan. Ct. App. 2009); *State v. Bauer*, 931 N.E.2d 1283, 1292 (Ill. Ct. App. 2010); *State v. Eichhorst*, 879 N.E. 2d 1144, 1154-1155 (Ind. Ct. App. 2008); *State v. Straehler*, 745 N.W.2d 431 (Wis. Ct. App. 2007).

Defendant next contends that the Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings (42 Pa.C.S.A. 5961, et seq.) is not the proper procedure for the Commonwealth to obtain Defendant's medical records. According to Defendant, neither this Act nor any other specific act in Pennsylvania permits obtaining documents; therefore the proper procedure would be to first obtain the records pursuant to HIPAA regulations. Since the court has found that the records were obtained pursuant to the law enforcement exception contained in the HIPAA regulations, Defendant is not entitled to relief on his claim that the records were improperly obtained pursuant to the Uniform Act.

The court also notes that the records were not obtained in response to the Commonwealth's subpoena, but rather the judges' certificate and orders. While a court can compel the release of records to a party, a subpoena can only compel production of records at a hearing or other judicial proceeding. Pa.R.Crim. P. 107 ("A subpoena in a criminal case shall order the witness named to appear before the court at the date and time specified, and to bring any items identified or described."); see also Pa.R.Civ.P. 234.1(c) ("A subpoena may not be used to compel a person to appear or produce documents or things ex parte before an attorney, a party or a representative of a party.")

ORDER

AND NOW, this ____ day of December 2015, the court denies Defendant's motion to quash the subpoena and/or to suppress Defendant's medical records.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
William Miele/Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file