

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA,

CRIMINAL DIVISION "W"
CASE NO. 502010CF005829AXXXMB

vs.

JOHN B. GOODMAN,

Defendant.
_____ /

FILED
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CLERK OF COURT
Palm Beach County, Florida

**ORDER DENYING STATE'S MOTION FOR AUTHORIZATION
TO EXECUTE INVESTIGATIVE SUBPOENA**

THIS CAUSE came before the Court on the State's Motion for Authorization to Execute Investigative Subpoena, filed November 19, 2013, and Defendant's Response, filed November 27, 2013. After carefully examining and considering the request, the memorandum of law, the argument of counsel at the hearing held December 2, 2013, and all other pertinent pleadings and relevant case law, it is hereby **ORDERED AND ADJUDGED** as follows:

The State requests medical records from Defendant's treating physician in Texas pertaining to Defendant's prescription for Hydrocodone for the year preceding the motor vehicle crash on February 12, 2010. (Mot. ¶ 2.) Specifically, the State seeks information on "why any controlled substances were prescribed, any adjustments to amount or dosage of any prescribed controlled substances, and directions on how any controlled substance should be taken" (Mot. ¶ 2.) Lastly, the State sought the contents of the medical records or any medical advice that discussed Defendant's "use or abstinence from the consumption of alcoholic beverages." (Mot. ¶ 2.)

A patient's medical records are protected under Florida's right to privacy as well as statute. Art. I, § 23, Fla. Const.; § 395.3025, Fla. Stat. Section 395.3025(4)(d), Florida Statutes permits legitimate access to medical records under subpoena:

Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to: ...[i]n any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative.

§ 395.3025(4)(d), Fla. Stat. The standard established in *Hunter v. State*, 639 So. 2d 72 (Fla. 5th DCA 1994) governs when the State may use an investigative subpoena to compel disclosure of a patient's medical records. First, the State may use an investigative subpoena to compel disclosure of a patient's medical records, but the patient must be given notice before the subpoena is issued. *Id.* at 74. Second, in the event the patient objects, the State has "the burden to show the relevancy of the records requested." *Id.* The *Hunter* court also stated that a finding of relevancy is not equivalent to a finding of probable cause. *Id.* Therefore, in the event a defendant does not want the Court to issue the subpoena permitting the State to obtain his medical records as part of a criminal investigation, the defendant must object.

Here, Defendant objects to the disclosure of the requested medical records and asserts that a compelling state interest does not exist since the records are not relevant to prove any material fact. (Resp. ¶ 12.) Defendant explains that the information regarding why he was prescribed the medication or whether his dosage was adjusted does not provide any evidence as to his alleged impairment on the night of the accident. (Resp. ¶ 12.) The Court finds Defendant's argument persuasive and agrees that Defendant's medical records for the year preceding are not relevant to the accident on February 12, 2010. Instead, what is relevant is the amount of any Hydrocodone in Defendant's system on February 12, 2010. The Court cannot find a case which permits reaching back in time as fast as the State would like to do in obtaining these records. *See Guardado v. State*, 61 So. 3d 1210, 1212 (Fla. 4th DCA 2011) (requesting defendant's records of medical blood drawn shortly after the accident); *McAlevy v. State*, 947 So. 2d 525, 528 (Fla. 4th DCA 2006) (requesting defendant's records of blood alcohol test at

hospital emergency room and records on medics who administered a sedative in order to transport the defendant to the hospital); *Ussery v. State*, 654 So. 2d 561, 562 (Fla. 4th DCA 1995) (requesting defendant's medical records of hospitalization for injuries received in the accident, including blood test results). Accordingly, the State's Motion for Authorization to Execute Investigative Subpoena is hereby **DENIED**.

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this 3 day of December, 2013.



JEFFREY COLBATH
CIRCUIT JUDGE

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