

WALTER F. BUGDEN, JR. (480)
TARA L. ISAACSON (7555)
BUGDEN & ISAACSON, L.L.C.
445 East 200 South, Suite 150
Salt Lake City, UT 84111
Telephone: (801) 467-1700
Facsimile: (801) 746-8600

RICHARD A. WRIGHT (Nevada Bar No. 888)
WRIGHT, JUDD & WINCKLER
Bank of America Plaza
300 South Fourth Street, Suite 701
Las Vegas, NV 89101
Telephone: (702) 382-4004
Facsimile: (702) 382-4800

Attorneys for Defendant

2007 OCT 30 PM 3:42
2007 OCT 12 PM 12:16
BY _____

*Ordered Filed
30 Oct 07
★*

**IN THE FIFTH DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**DEFENDANT'S REPLY TO STATE'S
OBJECTION TO AND REQUEST FOR
CLARIFICATION RE
PROPOSED ORDER ALLOWING
CONFIDENTIAL AND PRIVILEGED
CONTACT WITH PATIENT
[Filed Under Seal]**

Case No. 061500526

Judge James L. Shumate

The Defendant, Warren Jeffs, by and through counsel, hereby replies to the State's objection and request for clarification. The Defendant does not believe that the proposed Order exceeds the request filed by the Defendant contained in the Defendant's Motion for Confidential and Privileged Physician Contact with Patient. The

undersigned counsel attempted to prepare an Order that was entirely consistent with this Court's oral ruling. To the extent that the proposed Order is an accurate in any regard, the Defendant will be happy to modify the Order.

DEFENDANT'S PRESENCE AT THE HEARING

An expedited hearing to address the Defendant's request to obtain a second opinion concerning the Defendant's health does not constitute a critical stage of the criminal proceeding. Critical stages of a criminal proceeding include arraignment, preliminary hearing, trial and sentencing. *See Hamilton v. Alabama*, 368 U.S. 52, 55 (1961) (holding that arraignment is a critical stage where the right to counsel cannot be infringed); *White v. Maryland*, 373 U.S. 52, 60 (1963) (per curiam) (determining that preliminary hearing is a critical stage where right to counsel cannot be infringed); *Wagstaff v. Barnes*, 802 P.2d 774, 779 (Utah Ct. App. 1990) (holding that trial is a critical stage where defendant has right to counsel even if defendant himself is not present); *State v. Curry*, 147 P.3d 483 (Ut. Ct. App. 2006). Litigating the issue of whether the defendant and his counsel are entitled to obtain a second opinion on the defendant's medical diagnosis, treatment, and access to medical records is simply not a critical stage of the proceedings and the defendant's personal presence during the expedited hearing was not necessary.

Should the Court conclude that discussions concerning obtaining a second opinion on medical diagnosis, treatment, and disbursement of medical records constitutes a critical stage of the proceeding, the undersigned counsel hereby waive the defendant's right to be present during the discussion on these issues. There is no

compelling reason why defendant's counsel cannot waive the defendant's presence from a discussion on these issues.

HIPPA

The reference to HIPPA was mentioned by the undersigned counsel during the oral argument in passing. The Defendant acknowledges that neither party briefed any issues related to HIPPA. Ultimately, the undersigned counsel included a reference to HIPPA merely because the Court mentioned HIPPA in announcing its ruling. The undersigned counsel would be happy to delete any reference to HIPPA to satisfy the State's objection or if this Court believes the HIPPA reference should be deleted.

As to access to medical records, the Defendant has executed a medical release authorizing the Purgatory Correctional Facility to release all of the Defendant's medical records to his defense counsel. A copy of the release is attached hereto.

Additionally, co-counsel of the Defendant, Richard Wright, has specifically discussed this issue with the Defendant who has agreed that defense counsel should be entitled and have access to the Defendant's medical records.

CONSENT IN GENERAL

The Defendant has advised Richard Wright that he is willing to meet with Dr. Lloyd Barlow, Dr. Thomas Bittker, and Dr. Claude Warner. The release of the medical records to defense counsel includes allowing defense counsel to share those records with the enumerated physicians.

REFUSAL OF CONSENT

Should the Defendant not wish to be examined by the proposed physicians, then the Purgatory Correctional Facility should not be required to compel the Defendant to see the proposed physicians over the Defendant's objection.

CONSULT WITH ENTIRE HOSPITAL / MEDICAL STAFF

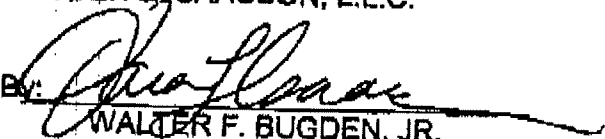
The language objected to by the State was included merely because Mr. Belnap requested this clarification and the Court made reference to contact from doctors on down to nurses. Nonetheless, the Defendant is happy to agree that all requests for consultation be limited to Dr. LaRowe.

CONCLUSION

Discussions about obtaining a second opinion on medical diagnosis, treatment and dissemination of medical records is not a critical stage of the proceeding. The Defendant has signed a medical release authorizing Purgatory Correctional Facility to disclose all medical records to defense counsel. Any reference to HIPPA can be deleted from the Order. PCF should not be required to compel the Defendant to meet with Dr. Barlow, Bittker, or Warner against his wishes. And finally, the Defendant agrees that all consultation between the consulting physicians can be channeled through Dr. LaRowe.

DATED this 12th day of February, 2007,

BUGDEN & ISAACSON, L.L.C.

BY: 
WALTER F. BUGDEN, JR.
TARA L. ISAACSON
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on the 12 day of February, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap
Washington County Attorney
178 North 200 East
St. George, UT 84770

HAND DELIVERY
 U.S. MAIL
 OVERNIGHT MAIL
 FACSIMILE



Purgatory Correctional Facility

I, Warren Steed Jeffs, hereby consent to and request the release of all of my medical records, tests and evaluations, of every type and in every form for all of my treatment at Purgatory Correctional Facility, and anyplace the correctional facility sends me or contracts with, to my attorneys, Richard A. Wright, Esq., and Walter Bugden.

Date Feb. 2, 2007

Warren Steed

Witnessed By

Richard A. Wright
2/2/07