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DISTRICT COURT

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WASHINGTON COUNTY

BY *cps*

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FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

STATE'S MEMORANDUM
REGARDING HIPAA

Criminal No. 061500526

Judge James L. Shumate

Pursuant to the Court's Minute Entry Order of April 20, 2007, the State respectfully submits the following memorandum regarding the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as it relates to the Motion to Intervene.

When enacting HIPAA in 1996, Congress directed the Secretary of Health and Human Services to promulgate regulations to protect the privacy of health information of individuals. 42 U.S.C. §§ 1320d-1(d), 1320d-3(a)(b), 1320d-4(b). The health care privacy regulations adopted by the Secretary are contained in the Code of Federal Regulations. 45 C.F.R. § 164.

Under the CFR, a "covered entity" may not use or disclose "protected health information" except under certain circumstances. 45 C.F.R. § 164.502(a)(1). "Covered entities"

include health plans, health care providers, and healthcare clearinghouses. See 45 C.F.R. §§ 160.102, 160.103. Because the court is none of those things, it is not a "covered entity."

However, individuals who conduct competency or other health evaluations pursuant to court order may be "covered entities" under HIPAA. Nevertheless, disclosure of health care information pursuant to court order in a judicial proceeding is specifically authorized by the regulations:

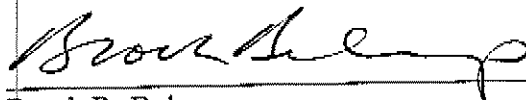
(e) Standard: Disclosures for judicial and administrative proceedings – (1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; ...

45 C.F.R. § 164.512(e)(1); see also § 164.502(a)(1)(vi).

Thus, the administrative regulations expressly recognize judicial proceedings as an exception to HIPAA's nondisclosure requirements so long as the disclosure is pursuant to a court order. *Id.*

Respectfully submitted this 11th day of May 2007.



Brock R. Belnap
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CERTIFICATE OF DELIVERY

I hereby certify that, on the 11th day of May, 2007, I caused a true and correct copy of the foregoing document to be served as follows:

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