
**In the
Appellate Court of Illinois
Third Judicial District**

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee

v.

ISMAEL GOMEZ-RAMIREZ,

Defendant

(AMITA HEALTH ADVENTIST MEDICAL CENTER,
BOLINGBROOK and ALEXIAN BROTHERS-AHS
MIDWEST REGION HEALTH CO.,

Contemnors-Appellants)

Appeal from the Circuit Court for the Twelfth Judicial Circuit, Will County,
Case No. 2018 CF 1946
The Honorable Edward A. Burmila, Jr., Judge Presiding.

**APPELLANTS' BRIEF OF
AMITA HEALTH**

Steven F. Pflaum
Dana V. M. Engel
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street
Suite 1700
Chicago, IL 60602
(312) 269-8000
spflaum@nge.com
dengel@nge.com

John W. Whitcomb
Joseph T. Monahan
Monique C. Patton
MONAHAN LAW GROUP, LLC
55 West Monroe Street, Suite 3700
Chicago, IL 60603
(312) 419-0252
jwhitcomb@monahanlawllc.com
jmonahan@monahanlawllc.com
mpatton@monahanlawllc.com

POINTS AND AUTHORITIES

	<u>Page(s)</u>
ARGUMENT	18
I. Summary of Argument.....	18
<i>D.H. v. Chicago Housing Authority</i> , 319 Ill.App.3d 771 (1st Dist. 2001)	20
II. The Circuit Court Erred by Requiring Production of Medical Records Protected by the Physician-Patient Privilege	20
A. The Subpoenaed Medical Records Are Privileged.....	20
Section 8-802 of the Code of Civil Procedure, 735 ILCS 5/8-802	20-21, 22
<i>Best v. Taylor Machine Works</i> , 179 Ill.2d 367 (1997)	21
<i>Petrillo v. Syntex Laboratories, Inc.</i> , 148 Ill.App.3d 581 (1st Dist. 1986), <i>appeal denied</i> , 113 Ill.2d 571 (1987)	21
<i>Parkson v. Central Du Page Hospital</i> , 105 Ill.App.3d 850 (1st Dist. 1982).....	21, 22
<i>People ex rel. Dep't of Prof'l Regulation v. Manos</i> , 202 Ill.2d 563 (2002)	22
B. The Defendant's Sixth Amendment Rights Do Not Override the Physician-Patient Privilege Applicable to the Medical Records Subpoenaed by the State.....	
U.S. Const. amend. VI	23, 24
Supreme Court Rule 412.....	23
1. The State lacks standing to assert the defendant's Sixth Amendment rights	24
U.S. Const. amend. VI	24
<i>People v. Cochran</i> , 313 Ill. 508 (1924)	25

POINTS AND AUTHORITIES (cont'd)

Page(s)

2.	Even if the defendant’s Sixth Amendment rights could be invoked by the State, they would not override the protection afforded by the physician-patient privilege.....	25
	<i>People v. Foggy</i> , 121 Ill.2d 337, cert. denied, 486 U.S. 1047 (1988).....	25-26
	<i>People v. Bean</i> , 137 Ill.2d 65 (1990), cert. denied, 499 U.S. 932 (1991)	26
	<i>Pennsylvania v. Ritchie</i> , 480 U.S. 39 (1987)	27
	<i>People v. Sevedo</i> , 2017 IL App (1st) 152541	27
	<i>People ex rel. Dep’t of Prof’l Regulation v. Manos</i> , 202 Ill.2d 563 (2002)	27-28
C.	The Circuit Court Erred by Holding That the State’s Discovery Obligations Under the Supreme Court Rules, to Produce Certain Information Within Its Possession or Control, Entitle It to Obtain Privileged Medical Records in the Possession of a Third Party	28
	Supreme Court Rule 412(a).....	28
	<i>People v. House</i> , 141 Ill.2d 323 (1990)	28-29
	<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	29
	<i>United States v. Tadros</i> , 310 F.3d 999 (7th Cir. 2002)	29
	<i>United States v. Senn</i> , 129 F.3d 886 (7th Cir. 1997)	29
	<i>People v. Bickham</i> , 89 Ill.2d 1 (1982)	30
	<i>People ex rel. Dep’t of Prof’l Regulation v. Manos</i> , 202 Ill.2d 563 (2002)	30
D.	The Compelled Production of Medical Records Protected by the Physician-Patient Privilege Constitutes the First of Two Grounds for Reversal.....	30
	<i>Sparger v. Yamini</i> , 2019 IL App (1st) 180566	30
	<i>D.H. v. Chicago Housing Authority</i> , 319 Ill.App.3d 771 (1st Dist. 2001)	30

POINTS AND AUTHORITIES (cont'd)

	<u>Page(s)</u>
III. The Circuit Court Also Erred by Requiring the Disclosure of the Subpoenaed Medical Records Without Affording the Crime Victim Notice and an Opportunity to Be Heard, as Required by the Illinois Constitution and the Rights of Crime Victims and Witnesses Act	30
Ill. Const. art. I, § 8.1(a)(2).....	30, 31
725 ILCS 120/4(a)(1.5)	30-31
<i>Karsten v. McCray</i> , 157 Ill.App.3d 1 (2d Dist. 1987)	31
A. The State Violated Its Responsibility to Protect the Crime Victim’s Rights Under Article I, Section 8.1(a)(2) of the Illinois Constitution	31
Ill. Const. art. I, § 8.1(a)(2).....	31-33
735 ILCS 5/8-802	32
98th Ill. Gen. Assem., House Joint Res. HC0001, 2013 Sess. (as introduced).....	33
98th Ill. Gen. Assem., House Joint Res. HC0001, 2014 Sess. (House Comm. Amend. No. 2).....	33-34
B. The State’s Failure to Provide the Crime Victim with Notice and an Opportunity to Be Heard Also Violated the Rights of Crime Victims and Witnesses Act	35
725 ILCS 120/4(a)(1.5)	35, 36, 37
<i>Reda v. Advocate Health Care</i> , 199 Ill.2d 47 (2002)	36-37
<i>Lake County Grading Co., LLC v. Village of Antioch</i> , 2014 IL 115805	37
IV. The Contempt Order Should Be Vacated.....	37
<i>People v. Shukovsky</i> , 128 Ill.2d 210 (1988).....	38
<i>Beyer v. Parkis</i> , 324 Ill.App.3d 305 (1st Dist. 2001)	38

NATURE OF THE CASE

This is an appeal from an order holding AMITA Health in direct civil contempt for declining to produce medical records. The State had subpoenaed the records, which concern health care services provided by AMITA Health to a patient who was a crime victim, in connection with the criminal prosecution of the victim's assailant.

AMITA Health filed a motion to quash the subpoena for two reasons:

1. The records are protected by the physician-patient privilege contained in 735 ILCS 5/8-802; and
2. The State failed to provide the patient/crime-victim with notice that her medical records were being subpoenaed and an opportunity to be heard, as required by article I, section 8.1(a)(2) of the Illinois Constitution and section 4(a)(1.5) of the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4(a)(1.5).

The circuit court denied AMITA Health's motion to quash the subpoena. After AMITA Health filed a motion for reconsideration or, in the alternative, for entry of "friendly" civil contempt, the court denied the motion for reconsideration, held AMITA Health in direct civil contempt for failing to provide the subpoenaed records for *in camera* review, imposed a \$500 per day penalty until the records are produced, and stayed that penalty pending the filing of a notice of appeal and the decision of the ensuing appeal.

AMITA Health appealed the contempt order under Supreme Court Rule 304(b)(5). No questions are raised on the pleadings.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the circuit court err by concluding that the physician-patient privilege was overridden, with respect to a subpoena for medical records served by the State, by the defendant's Sixth Amendment right to compulsory process and by the State's obligation under Supreme Court Rule 412 to disclose certain materials within its possession or control?
2. Did the circuit court err by concluding that the "State has complied with Article I, Section 8.1(a)(2) of the Illinois State Constitution" despite uncontroverted facts establishing that, in accordance with the standard practice of the Will County State's Attorney's Office, the patient/crime-victim did not receive notice and a hearing before the court ruled on access to the patient/crime-victim's privileged medical records?
3. Did the circuit court err by denying AMITA Health's motion to quash the subpoena for medical records despite the refusal of the State's Attorney's Office, in violation of Section 4(a)(1.5) of the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4(a)(1.5), to provide the patient/crime-victim with notice and an opportunity for a hearing?

STATEMENT OF JURISDICTION

On February 19, 2020, the circuit court entered an order denying AMITA Health’s motion for reconsideration of the denial of its motion to quash subpoena. The order also found AMITA Health in direct civil contempt for failing to provide the court with subpoenaed records for *in camera* review, imposed a \$500 per day penalty until the records are produced, and stayed the penalty pending the filing of a notice of appeal and the ensuing decision of that appeal. (C.116, A.1.)¹

On February 28, 2020, AMITA Health timely filed its Notice of Appeal. (C.128, A.3.) On March 3, 2020, still well within the 30-day period for filing a notice of appeal, AMITA Health filed an Amended Notice of Appeal. (C.132, A.7.) Jurisdiction is proper in this Court under Supreme Court Rule 304(b)(5), which authorizes an appeal from an “order finding a person or entity in contempt of court which imposes a monetary or other penalty.”

¹ Citations to the record on appeal are as follows:

Common Law Record	C.[page no(s).]
Secured Common Law Record	Sec. C.[page no(s).]
Report of Proceedings	R.[page no. / line no. – [page no./] line no.]
Supplemental Report of Proceedings	Supp. R.[page no. / line no. – [page no./] line no.]

Citations to the Appendix are in the form (A.[page no(s).]).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal involves the provision in the Illinois Constitution that gives crime victims the right to notice and a hearing before a court rules on a request for access to any of their privileged records, the parallel provision in the Rights of Crime Victims and Witnesses Act, and the statute that codifies the physician-patient privilege.

Article I, Section 8.1(a)(2) of the Illinois Constitution reads as follows:

SECTION 8.1. CRIME VICTIMS' RIGHTS.

(a) Crime victims, as defined by law, shall have the following rights:

* * *

(2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.

Section 4(a)(1.5) of the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4(a)(1.5), provides:

Sec. 4. Rights of crime victims.

(a) Crime victims shall have the following rights:

* * *

(1.5) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.

Section 8-802 of the Code of Civil Procedure, 735 ILCS 5/8-802, reads

in pertinent part:

Sec. 8-802. Physician and patient. No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except only . . . (3) with the expressed consent of the patient..., [or] (13) upon the issuance of a grand jury subpoena pursuant to Article 112 of the Code of Criminal Procedure of 1963....

Upon disclosure under item (13) of this Section, in any criminal action where the charge is domestic battery, aggravated domestic battery, or an offense under Article 11 of the Criminal Code of 2012 or where the patient is under the age of 18 years or upon the request of the patient, the State's Attorney shall petition the court for a protective order pursuant to Supreme Court Rule 415.

STATEMENT OF FACTS

I. Relationship Between the Subpoena at Issue and the Underlying Criminal Proceeding

Ismael Gomez-Ramirez was charged in a two-count indictment with aggravated battery (720 ILCS 5/12-3.05(a)(1)) and battery (720 ILCS 5/12-3(a)(2)) arising out of his alleged assault of E.R. on October 6, 2018.² (C.17.) In June 2019, the Will County State's Attorney served a subpoena on Adventist Bolingbrook Hospital seeking all of the medical records pertaining to the treatment it provided E.R. for the injuries she suffered in the attack.

² The crime victim's initials are used to protect her privacy.

The subpoena sought “[a]ny and all records for [E.R.] F/W dob. 11/15/87 from the date of 10/6/18 to the date of discharge.” (Sec. C.13, A.18.)

The State’s Attorney did not provide E.R. with notice of the subpoena or an opportunity to be heard before any documents were produced. (R. 14/9-11.) This was consistent with the standard practice of the Will County State’s Attorney not to provide notice to crime victims of subpoenas seeking the victims’ medical records. The Assistant State’s Attorney responsible for the prosecution of Mr. Gomez-Ramirez (the “ASA”) later asserted that this practice was permissible because the requirement for notice to crime victims contained in the Illinois Constitution was allegedly inapplicable:

“[A]s a matter of practice we are not required under the Illinois Constitution to notify the victim of a subpoena which is sent out for her medical records.... [W]e didn’t send a copy of the subpoena to the victim in this matter. We don’t do that.”
(R.14/9-14, A.100.)

II. After Unsuccessfully Attempting to Resolve Its Concerns About the Subpoena, AMITA Health Filed a Motion to Quash

The hospital to which the subpoena was directed is currently known as AMITA Health Adventist Medical Center, Bolingbrook. The hospital is part of an Illinois-based health system known as AMITA Health that is overseen by Alexian Brothers-AHS Midwest Region Health Co. (Sec. C. 6, A.11.) (AMITA Health Adventist Medical Center, Bolingbrook and Alexian Brothers-AHS Midwest Region Health Co. are collectively referred to as “AMITA Health.”)

AMITA Health responded to the subpoena by a letter explaining that it was unable to provide the requested medical records due to missing documentation. Referencing the requirements of the Health Insurance Portability and Accountability Act (HIPAA), the letter explained that one of three kinds of documentation was required: (1) patient authorization; (2) a HIPAA Qualified Protective Order; or (3) “[s]atisfactory assurance that reasonable efforts have been made to ensure that the individual who is the subject of the medical record being requested has been given notice of the request.” (Sec. C.14, A.19.) *See* 45 CFR 164.512(e). The letter also referenced additional requirements imposed by Illinois law. (Sec. C.14, A.19.)

Counsel for AMITA Health subsequently spoke with the ASA on several occasions, but the lawyers were unable to resolve their disagreement about the legal requirements governing the disclosure of subpoenaed medical records. (Sec. C.7, A.12.) After discussing the matter with the judge presiding over the case, the ASA “informed counsel that the Court directed counsel to appear on November 13, 2019, with a physical copy of the medical records of a non-party victim in their possession.” (Sec. C.7, A.12.)

On November 7, 2019, AMITA Health filed a motion to quash the subpoena. (Sec. C.6, A.11.) The motion asserted two separate and independent grounds:

1. The subpoenaed documents were protected by the physician-patient privilege codified in Section 8-802 of the Code of Civil

Procedure, 735 ILCS 5/8-802, and therefore could not be produced without the patient's consent; and

2. The State's Attorney's Office had failed to provide the crime-victim/patient with notice of the subpoena, and an opportunity to be heard, as required by article I, section 8.1(a)(2) of the Illinois Constitution and by section 4(a)(1.5) of the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4(a)(1.5).

III. The Initial Hearing on AMITA Health's Motion to Quash Subpoena

The motion to quash was presented at a hearing before the Honorable Edward A. Burmila, Jr. on December 5, 2019. Judge Burmila expressed skepticism about the motion, stating that he had literally heard hundreds of requests for medical records in the four years he had been on his current court call without anyone ever objecting. (R.8/3-23, A.94.) Focusing on the physician-patient privilege issue, the Court asserted that the privilege was overridden by the defendant's Sixth Amendment right to confront witnesses. (R.10/15-20, 11/21-24, A.96-97.) If the law were otherwise, the Court suggested, the defendant would be deprived of potentially exculpatory information which the State's Attorney has a duty to "ferret out." (R.11/7-9, A.97.)

The ASA echoed the Court's comments. After alluding to the State's *Brady* obligations to *disclose* exculpatory information, the ASA asserted that her office is "under an obligation to attempt to *obtain* those [medical] records." (R.15/12-19, A.101; R.17/16-17, A.103 (emphasis added).) Building

from that premise, the ASA argued that the defendant's due process and confrontation rights override the physician-patient privilege. (R.19/1-6, A.105.)

With respect to AMITA Health's contention that the Illinois Constitution and the Rights of Crime Victims and Witnesses Act give a patient/crime-victim the right to notice of the subpoena and an opportunity to be heard before a court rules on a request for access to privileged information, the ASA argued that crime victims' rights only apply to subpoenas served by defendants. (R.14/15-22, A.100.) The ASA based this argument on a statutory provision that applies to defendants who subpoena privileged records of a crime victim (725 ILCS 120/4.5(c-5)(9)). The ASA failed to acknowledge that (1) another statute also applies to subpoenas served by the State (725 ILCS 120/4(a)(1.5)), and (2) the Constitutional protection of victim's rights likewise applies to subpoenas served by either the State or defendants (Ill. Const. art. I, § 8.1(a)(2)).

Judge Burmila set the motion to quash for another hearing without requesting briefing by the State. (R.20/23 – 21//1, A.107-08.) At the outset of the ensuing hearing, the Court announced its ruling denying the motion:

“And I took the arguments that you made into account ... and I went and looked at the language—of course, I'm familiar with the one in the Federal Constitutional and not so much with the Illinois State Constitution, but both Section 8 [sic] of the Illinois State Constitution and, of course, the 6th Amendment in the United States Constitution say that defendants in criminal cases are entitled to

compulsory process. Counsel now argues on behalf of the hospital that compulsory process doesn't really mean that, but that there are strings attached. So what my ruling in this case is going to be is I'm ordering you to produce the information for in camera inspection before I rule on whether or not the hospital is entitled to the protective order." (R.25/5-19, A.111.)

This ruling appears to be based on the Court's conclusion that the physician-patient privilege applicable to the patient/crime-victim's medical records was overridden, with respect to a subpoena served by the State, by the defendant's constitutional right to compulsory process. The ruling did not address the State's failure to provide the patient/crime-victim with notice and an opportunity to be heard, as required by article I, section 8.1(a)(2) of the Illinois Constitution and by section 4(a)(1.5) of the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4(a)(1.5). The order memorializing the Court's ruling simply stated in pertinent part that the "motion to quash was denied for reasons stated in the record." (C.38, A.2.)

The Court gave counsel for AMITA Health time to decide whether to produce the records, but ordered counsel to come to the next hearing with "whoever it is that I'm going to hold in contempt." (R.25/20 – 26/2, A.111-12.)

IV. AMITA Health's Response to the Order Compelling Production of the Privileged Medical Records

AMITA Health decided to try to provide the patient/crime-victim with the notice that it believed should have been provided by the State. It sent a letter to E.R. stating that the medical records pertaining to her

hospitalization at AMITA Health Adventist Bolingbrook Medical Center had been subpoenaed by the State's Attorney in connection with the prosecution of Mr. Gomez-Ramirez. The letter informed her that AMITA Health had objected to the subpoena, explained why, and suggested what she may wish to do if she wanted to consent to or oppose disclosure of her medical records. (C.42-43.)

It is unclear whether E.R. received the letter from AMITA Health. It is clear, however, that she never consented to the disclosure of her medical records. (See R.14/11-14, A.100.)

Having received no response to its letter to E.R., AMITA Health filed a motion for reconsideration or, in the alternative, for entry of friendly civil contempt. (C.49, A.24; Supp. R.7/11-16.) Reconsideration was sought on the grounds that:

1. The Court erred in concluding that the physician-patient privilege was superseded by the defendant's Sixth Amendment rights, in that the State lacks standing to assert the defendant's constitutional rights;
2. Even if the State had standing, the Court's conclusion that the defendant's Sixth Amendment rights superseded the protection provided by the physician-patient privilege conflicts with the Illinois Supreme Court decisions in *People v. Foggy*, 121 Ill.2d

337, *cert. denied*, 486 U.S. 1047 (1988), and *People v. Bean*, 137 Ill.2d 65 (1990), *cert. denied*, 499 U.S. 932 (1991); and

3. Regardless whether the subpoena should ultimately be enforced, the State was first required, under the Illinois Constitution and the Rights of Crime Victims and Witnesses Act, to provide the patient/crime-victim with notice and an opportunity to be heard.

If the Court declined to reconsider its ruling, AMITA Health sought an order holding it in “friendly” civil contempt, and imposing a nominal fine, so that it could seek appellate review. According to the motion, guidance was needed from the Appellate Court because this case involved the second subpoena that had recently been served by the Will County State’s Attorney on AMITA Health without being preceded by notice to the patient/crime-victim and an opportunity to be heard, issuance of a HIPAA protective order, or the patient’s consent. (C.52, A.27.) Far from being an aberration, this apparently reflected the standard practice and official policy of the Will County State’s Attorney Office. (R.14/9-14, A.100.)³

V. Disposition of AMITA Health’s Motion for Reconsideration or, in the Alternative, for Entry of Friendly Civil Contempt

The State requested and received leave to brief AMITA Health’s motion for reconsideration. (Supp. R.5/20 – 6/19.) Even though the Court

³ The Will County State’s Attorney has since served AMITA Health with three more subpoenas seeking medical records of crime victims without providing the victims with notice and an opportunity to be heard.

had based its denial of the motion to quash on the defendant's Sixth Amendment rights, the defendant's counsel did not seek leave to brief the motion for reconsideration. (Supp. R.5/20 – 7/10.) When later asked at the hearing on the motion whether he wished to be heard, the defendant's counsel declined the opportunity. (R.31/8-9, A.117.) The subpoena was served by the State, and it was the State alone that fought to enforce it.

The State's response to the motion for reconsideration attempted to distinguish *People v. Foggy* and *People v. Bean*, where the Illinois Supreme Court had ruled that the Sixth Amendment did not entitle the defendant to obtain otherwise privileged documents. Instead, the State relied on the earlier U.S. Supreme Court decision in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), which held that the defendant in that case was entitled to pretrial discovery of privileged records. (C.101, A.75.)

The State did not cite any cases in which the defendant's Sixth Amendment rights were found to support the State's subpoena of privileged records. Instead, the State relied on *People v. Cochran*, 313 Ill. 508 (1924), for the general proposition that the State's Attorney has the duty to protect the defendant's rights. The State argued that that duty was "solidified" by its responsibility under *Brady v. Maryland*, 373 U.S. 83 (1963), to turn over exculpatory evidence. (C.104, A.78.)

The State also defended its failure to provide the patient/crime-victim with notice of the subpoena. After citing the provisions in the Illinois

Constitution and the Rights of Crime Victims and Witnesses Act that do not confine crime victims' right to notice and an opportunity to be heard to subpoenas served by the defendant, the State cited a different section of the Act as the basis for arguing that "a closer reading [of] the plain language of the entire statute shows that this notice requirement only applies when those records ... are requested by a defendant." (C.102, A.76.) The State did not assert that article I, section 8.1(a)(2) of the Illinois Constitution was limited to crime victims' records that were sought by the defendant.

After AMITA Health filed a reply brief, the motion for reconsideration was heard on February 19, 2020. Judge Burmila announced that he was denying the motion:

"[T]he Court determines number one, that the defendant has expressed a claimed need for these records. Number two, that the State's Attorney subpoenaed the records, not the defendant. The State's Attorney has a continuing and ongoing duty to produce both inculpatory and exculpatory information and they must provide that on an ongoing basis pursuant to the Supreme Court Rules on discovery." (R.31/18 – 32/1, A.117-18.)

The Court's allusion to the defendant's claimed need for the records was apparently referring to a statement by the defendant's counsel at the December 5, 2019 hearing that "the reports and the victim's petition for order of protection indicate that she was drinking that evening, so her BAC could be in those medical records that could be *Brady* material." (R.19/11-14, A.105.) At no time, however, did the defendant serve his own subpoena, file briefs opposing either AMITA Health's motion to quash or motion for

reconsideration, join in the State's opposition to either motion, or ask that those motions be denied.

The Court did not address the threshold issue regarding whether the State has standing to rely on the defendant's Sixth Amendment rights. On the merits of the State's argument that the defendant's Sixth Amendment right to compulsory process overrides the physician-patient privilege, the Court acknowledged that an Illinois Supreme Court decision rejecting a similar argument "in the main is applicable," but asserted that the decision "supports a case by case analysis of the production of records of this type." (R.32/2-7, A.118, referencing *People v. Bean*, 137 Ill.2d 65 (1990), *cert. denied*, 499 U.S. 932 (1991).) The Court also relied on *Pennsylvania v. Ritchie* for its conclusion that an *in camera* inspection of the subpoenaed records is warranted. (R.32/7-13, A.118.)

With respect to the provision in article I, section 8.1(a)(2) of the Illinois Constitution requiring that crime victims receive notice of subpoenas of privileged documents and an opportunity to be heard, the Court opined, without explanation and without disputing that the State provided no such notice or opportunity to be heard, that "the State has complied with Article 1, Section 8.1(a)(2) of the Illinois State Constitution." (R.32/13-15, A.118.) The Court did not address the applicability of the Rights of Crime Victims and Witnesses Act to the State's subpoena.

Turning to AMITA Health’s alternative request for entry of an order finding it in friendly civil contempt, the Court granted that motion. Stressing that its intention was to have the hospital comply with the subpoena, rather than to punish the hospital, the Court found AMITA Health in direct civil contempt and fined it \$500 per day until it produces the records for *in camera* inspection. The Court stayed the fine during the 30-day period for filing a notice of appeal and during the pendency of any ensuing appeal. (R.32/22 – 33/10, A.118-19.)

A written order dated February 19, 2020, was entered denying the motion for reconsideration “for reasons stated in the record.” (C.116, A.1.)

AMITA Health filed a notice of appeal on February 28, 2020. (C.128, A.3.) A few days later, AMITA Health filed an amended notice of appeal. (C.132, A.7.) The only difference between the two notices of appeal is that the first one identified the appellant as AMITA Health Adventist Bolingbrook Hospital, which is the current legal name of the hospital to which the subpoena was directed, while the amended notice of appeal also identified as an appellant Alexian Brothers-AHS Midwest Region Health Co., which is the affiliated entity that responded to the subpoena on behalf of the hospital and filed the motion to quash and motion for reconsideration.

STANDARD OF REVIEW

An appeal from a civil contempt order “necessarily requires review of the order upon which it is based.” *Norskog v. Pfiel*, 197 Ill.2d 60, 69 (2001).

The standard of review is *de novo* if the underlying order turns on the applicability of a privilege or the legal effect of uncontroverted facts. *Id.* at 70-71. *See also Tomczak v. Ingalls Mem. Hosp.*, 359 Ill.App.3d 448, 452 (1st Dist. 2005) (applying *de novo* review to contempt order based on hospital's refusal to produce documents on ground of physician-patient privilege); *People v. Damkroger*, 408 Ill.App.3d 936, 940 (2d Dist. 2011) (contempt order based on application of the law to undisputed facts or on statutory interpretation is reviewed *de novo*).

This appeal is subject to *de novo* review because the contempt order raises purely legal issues regarding whether the subpoena should have been quashed. The validity of the subpoena turns on the application, to undisputed facts, of (1) the physician-patient privilege codified in Section 8-802 of the Code of Civil Procedure, and (2) the constitutional and statutory provisions requiring crime victims to receive notice of a subpoena and an opportunity to be heard before a court rules on the request for access to the victim's confidential records. Such legal issues are reviewed *de novo*. *See also Kraima v. Ausman*, 365 Ill.App.3d 530, 533 (1st Dist.), *appeal denied*, 221 Ill.2d 640 (2006) (applying *de novo* review in reversing civil contempt based on order compelling production of medical records protected by physician-patient privilege); *Sparger v. Yamini*, 2019 IL App (1st) 180566, ¶ 16 (applying *de novo* review in reversing contempt order based on refusal to produce privileged mental health records).

ARGUMENT

I. Summary of Argument

There are two, separate and independent reasons why the circuit court erred in denying AMITA Health's motion to quash subpoena and motion for reconsideration: first, the subpoenaed medical records are protected by the physician-patient privilege; and second, even if the privilege could somehow be overcome, the State violated its responsibility under the Illinois Constitution and the Rights of Crime Victims and Witnesses Act to give the patient/crime-victim notice and an opportunity to be heard before the court ruled whether access to the records would be given.

In a nutshell:

- It is undisputed that the subpoenaed medical records are protected by the physician-patient privilege and that the patient/crime-victim has not consented to their disclosure. The State's assertion that the privilege is overcome by the defendant's Sixth Amendment right to compulsory process is wrong because (a) the subpoena was not served by the defendant, (b) the State does not have standing to assert the defendant's Sixth Amendment rights, and (c) even if the State had standing, Illinois Supreme Court precedent indicates that there is an insufficient basis for overriding the privilege in this context.

- The circuit court erred in concluding that the State has an obligation, under *Brady v. Maryland* and Supreme Court Rule 412, to “ferret out,” obtain, and disclose to the defendant both inculpatory and exculpatory information. The State’s obligation under *Brady* and Rule 412 is to disclose to the defendant certain information “within its possession or control,” not to obtain information in the possession of a third party. Moreover, even if the State had an obligation to conduct discovery for the benefit of the defendant, that would not justify obtaining documents that are protected by the physician-patient privilege.
- The circuit court’s conclusion that the State complied with its responsibilities under article I, section 8.1(a)(2) of the Illinois Constitution cannot be squared with the undisputed fact that the State did not provide the patient/crime-victim with notice of the subpoena and an opportunity to be heard before seeking or obtaining a court ruling on its entitlement to access to the patient/crime-victim’s privileged medical records. Ignoring the plain language of the Constitution, the State erroneously insisted that it neither has an obligation to seek a court ruling regarding its entitlement to a crime victim’s medical records, nor

to provide crime victims with notice before obtaining a court ruling granting access to those records.

- The circuit court ordered production of the records without addressing the Rights of Crime Victims and Witnesses Act. The court ignored, and effectively excused, the State's brazen violation of the Act by refusing to provide the patient/crime-victim with the statutorily required notice and opportunity to be heard.

Where, as here, an order compelling disclosure of medical records "is invalid, then the contempt order, for failure to comply with that discovery order, must be reversed." *D. H. v. Chicago Housing Authority*, 319 Ill.App.3d 771, 773 (1st Dist. 2001). Because the circuit court erred by denying AMITA Health's motion to quash the subpoena and motion for reconsideration, the contempt order based on those rulings must likewise be reversed.

II. The Circuit Court Erred by Requiring Production of Medical Records Protected by the Physician-Patient Privilege

A. The Subpoenaed Medical Records Are Privileged

The physician-patient privilege prevents health care providers from disclosing patients' medical records. Codified in Section 8-802 of the Code of Civil Procedure, the privilege states in pertinent part:

"No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her

professionally to serve the patient....” 735
ILCS 5/8-802.

The physician-patient privilege protects what courts have described as the “strong public policy interest in preserving the sanctity of the physician-patient relationship.” *Best v. Taylor Machine Works*, 179 Ill.2d 367, 455 (1997). *See also Petrillo v. Syntex Laboratories, Inc.*, 148 Ill.App.3d 581, 588 (1st Dist. 1986), *appeal denied*, 113 Ill.2d 571 (1987) (“society possesses an established and beneficial interest in the sanctity of the physician-patient relationship”).

The privilege serves two important functions. First, it promotes the delivery of quality health care services by “encourag[ing] free disclosure between the physician and patient.” *Parkson v. Central Du Page Hospital*, 105 Ill.App.3d 850, 854 (1st Dist. 1982). Second, it “protect[s] the patient from the embarrassment and invasion of privacy which disclosure would entail.” *Id.*

The confidentiality inhering in physician-patient communications is rooted deep in history, dating back to the Hippocratic Oath conceived during the fifth century B.C. *Petrillo*, 148 Ill.App.3d at 589. In modern-day Illinois, the “certain remedy” clause contained in article I, section 12 of the Illinois Constitution “provides a constitutional source for the protection of the patient’s privacy interest in medical information and records....” *Best*, 179 Ill.2d at 458.

While the importance of the sanctity of the physician-patient relationship cannot be overstated, the privilege is subject to specified exceptions. Some apply to criminal cases (*e.g.*, in certain homicide trials), while others apply to civil cases (*e.g.*, in cases involving the validity of the patient's will) or to both criminal and civil cases (*e.g.*, in cases arising from the filing of a report under the Abused and Neglected Child Reporting Act). *See* 735 ILCS 5/8-802. Foremost among the exceptions is one allowing disclosure of otherwise privileged medical records "with the expressed consent of the patient...." *Id.*, item (3).

Unless one of the statutory exceptions is applicable, a hospital is prohibited from disclosing a patient's medical records, even in response to a subpoena. *Parkson*, 105 Ill.App.3d at 853-54 ("the hospital was mandated to assert the physician-patient privilege to insure that the patients' records would be protected in accordance with the intentions of our statute"). Although the privilege is not absolute, in the sense that there are statutory exceptions, "[c]ourts must apply these existing exceptions and cannot create additional exceptions to the privilege." *People ex rel. Dep't of Prof'l Regulation v. Manos*, 202 Ill.2d 563, 576 (2002) (upholding privilege against government-issued subpoena).

Here, it is undisputed that the medical records of E.R. that were subpoenaed by the State are protected by the physician-patient privilege. (C.101-02, A.75-76.) It is likewise undisputed that E.R. has not consented to

the disclosure of her records and that no statutory exceptions to the physician-patient privilege are applicable. (R5/3-15, A91; R14/11-14, A100; C101, A75.) As we now show, the circuit court erred in concluding, at different times, that the privilege was overridden by the defendant's Sixth Amendment rights or by the State's discovery obligations under the Supreme Court Rules.

B. The Defendant's Sixth Amendment Rights Do Not Override the Physician-Patient Privilege Applicable to the Medical Records Subpoenaed by the State

Although the circuit court did not say so expressly, it appeared to deny AMITA Health's motion to quash the subpoena on the ground that the physician-patient privilege was superseded by the defendant's Sixth Amendment right to compulsory process. (R.25/5-19, A.111; C.38, A.2.) AMITA Health responded with a motion for reconsideration challenging both the State's standing to rely on the defendant's Sixth Amendment rights and whether those rights would supersede the physician-patient privilege even if the State had standing to assert them. (C.49, A.24.)

In denying the motion for reconsideration, the circuit court did not specifically mention the Sixth Amendment, although it did refer to two cases that address the Sixth Amendment. Instead, alluding to Supreme Court Rule 412, the court *sua sponte* relied on the State's duty to provide information "on an ongoing basis pursuant to the Supreme Court Rules on discovery." (R.31/21 – 32/13, A.117-18; C.116, A.1.)

While it is unclear whether the circuit court ultimately based its order requiring production of the privileged medical records on the Sixth Amendment, it *is* clear that the State embraced that argument as its justification for overriding the physician-patient privilege. (C.100, A.74.) The following discussion demonstrates that the State’s Sixth Amendment argument lacks merit for each of the reasons asserted by AMITA Health in its motion for reconsideration.

1. The State lacks standing to assert the defendant’s Sixth Amendment rights

The defendant’s Sixth Amendment rights cannot override E.R.’s rights protected by the physician-patient privilege because the State, and not the defendant, subpoenaed E.R.’s medical records. In the proceedings below, neither the circuit court nor the State was able to cite any authority holding that the State has standing to invoke a defendant’s Sixth Amendment rights. Our research indicates that this was no oversight—as no such authority exists.

In the trial court, the State’s only response to the standing issue was to argue that it “has the duty to safeguard the constitutional rights of the defendant as those of any other citizen.” (C.103-04, A.77-78 (citation omitted).) But even the State did not suggest that it subpoenaed E.R.’s medical records to try to safeguard the defendant’s constitutional rights. The State subpoenaed the records to try to bolster its case against the defendant—a fact the State has never denied. (C.110-11, A.82-83.)

In any event, the single case that the State cited for its duty to safeguard the defendant's rights, *People v. Cochran*, 313 Ill. 508, 526 (1924), did not hold that the State has standing to assert a defendant's constitutional rights. The actual ruling in *Cochran* was that the State had violated a defendant's Fifth Amendment rights by tricking him into confessing to a murder. *Id.* at 526-27. Because neither *Cochran* nor any other case holds that the State has standing to assert a defendant's constitutional rights, as a basis for seeking privileged documents or for any other reason, the State cannot rely on the defendant's Sixth Amendment right to compulsory process as a basis for overriding the physician-patient privilege.

2. Even if the defendant's Sixth Amendment rights could be invoked by the State, they would not override the protection afforded by the physician-patient privilege

The Sixth Amendment would not override the physician-patient privilege even if the defendant had issued the subpoena. In *People v. Foggy*, 121 Ill.2d 337, *cert. denied*, 486 U.S. 1047 (1988), the Illinois Supreme Court held that the Sixth Amendment did not require disclosure of otherwise privileged communications with a rape counselor. "The ability to question adverse witnesses ... does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony." *Id.* at 345-46 (quoting *Pennsylvania v. Ritchie*, 480 U.S. 39, 52-53 (1987)). Accordingly, the Court ruled that the trial court

properly quashed a subpoena duces tecum served by the defendant on the organization that provided counseling to the rape victim. *Id.* at 350.

Similarly, in this case the defendant's ability to question E.R. at trial does not include the power to require disclosure of her privileged medical records. As in *Foggy*, the subpoena of the victim's privileged records should have been quashed. *See also People v. Bean*, 137 Ill.2d 65, 93 (1990), *cert. denied*, 499 U.S. 932 (1991) (defendant's Sixth Amendment rights were not violated by being denied access to witness's mental health records).

The circuit court did not address, much less try to distinguish, the Supreme Court's decision in *Foggy*. The court acknowledged that *People v. Bean* "in the main is applicable," but it asserted that *Bean* supports a case-by-case *in camera* inspection of the subpoenaed documents. (R.32/2-7, A.118.)

Bean does not support the *in camera* inspection of privileged records because the permissibility of that practice was not challenged in that case. *See* 137 Ill.2d at 90-91. On the other hand, that practice was challenged in *Foggy*, where both the witness's counselor and the State objected to *in camera* inspection of subpoenaed records. The Supreme Court held that the trial court had properly quashed the subpoena without reviewing the documents *in camera*. *See* 121 Ill.2d at 347-50. The Court emphasized that the defendant's request for an *in camera* inspection of the privileged records "was merely general" and did not allege that the records would contain exculpatory information. *Id.* at 349. Similarly, in this case the State never provided any

indication of what it expected to learn from the subpoenaed records, much less that those records were believed to contain exculpatory information.

The circuit court also relied on an *in camera* inspection of privileged documents allowed by the U.S. Supreme Court in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), but that reliance is likewise misplaced. Declining to base its decision on the Sixth Amendment, the five-member majority concluded that the Due Process Clause supported the Pennsylvania Supreme Court's ruling that a government agency's investigative files should be submitted for *in camera* review. The majority emphasized that the applicable Pennsylvania statute expressly authorizes disclosure of the subpoenaed records pursuant to court order. *Id.* at 57-58.

Here, on the other hand, the statute that codifies the physician-patient privilege does not contain an exception authorizing disclosure pursuant to court order. Neither the circuit court nor the State ever asserted that any statutory exception to the physician-patient privilege is applicable here. *In camera* review is inappropriate where, as here, "undisputed facts ... and the face of the subpoena establish that the documents sought by the State are absolutely protected from disclosure under the [applicable statutory] privilege." *People v. Sevedo*, 2017 IL App (1st) 152541, ¶ 39 (reversing order requiring *in camera* inspection of privileged documents). *See also Manos*, *supra*, 202 Ill.2d at 574 (prohibiting production of "confidential patient records unless one of the exceptions listed in the physician-patient privilege

applies”). The circuit court’s orders requiring AMITA Health to submit privileged medical records for *in camera* review, and holding it in contempt for declining to do so, should therefore be reversed.

C. The Circuit Court Erred by Holding That the State’s Discovery Obligations Under the Supreme Court Rules, to Produce Certain Information Within Its Possession or Control, Entitle It to Obtain Privileged Medical Records in the Possession of a Third Party

The circuit court based its denial of AMITA Health’s motion for reconsideration on a ground that the State had not argued. The Court ruled that AMITA Health was required to produce the privileged medical records because “[t]he State’s Attorney has a continuing and ongoing duty to produce both inculpatory and exculpatory information and they must provide that on an ongoing basis pursuant to the Supreme Court Rules on discovery.”

(R.31/21 – 32/1, A.117-18.)

There are two flaws in this reasoning. For starters, the discovery obligations of the State’s Attorney are limited to certain “material and information within its possession or control....” Supreme Court Rule 412(a). The medical records subpoenaed by the State are neither in its possession nor under its control.

People v. House, 141 Ill.2d 323 (1990), is dispositive on this issue. The defendant challenged his conviction on the ground that the State had failed to obtain and disclose certain hospital records that were not in the possession or control of the State’s Attorney’s Office. The Supreme Court rejected the

defendant's contention, holding that "[t]he State was not under a duty to discover and disclose the nurses' notes." *Id.* at 387. To establish a violation of the State's discovery obligations, the "defendant must establish that he requested the evidence in question, and that the State in fact possessed it and failed to disclose it." *Id.*

The limitation, to materials within its possession or control, on the State's discovery obligations parallels the scope of the State's obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). While the *Brady* doctrine requires the State to disclose to the defendant exculpatory information within its possession or control, it "does not require the government to gather information or conduct an investigation on the defendant's behalf." *United States v. Tadros*, 310 F.3d 999, 1005 (7th Cir. 2002). *Accord*, *United States v. Senn*, 129 F.3d 886, 893 (7th Cir. 1997).

Consequently, the circuit court was wrong, as a matter of law, when it declared that the State "has a duty to not only ferret out but turn over" exculpatory and other information. (R.11/8-9, A.97; R.31/21 – 32/1, A.117-18.) The court erred by relying on that non-existent duty as a justification for compelling production of privileged medical records.

The second flaw in the circuit court's reliance on the State's discovery obligations under Rule 412 is that the court erroneously assumed the State would be able to obtain privileged records if it were obligated to exercise its subpoena power to aid the defendant. Not so. It is axiomatic that the State's

subpoena power does not authorize the production of medical records protected by the physician-patient privilege. *See, e.g., People v. Bickham*, 89 Ill.2d 1 (1982) (quashing grand jury subpoena seeking privileged medical records); *Manos, supra*, 202 Ill.2d at 569 (physician-patient privilege prevented production of medical records sought by government subpoena).

D. The Compelled Production of Medical Records Protected by the Physician-Patient Privilege Constitutes the First of Two Grounds for Reversal

Because neither the defendant's Sixth Amendment rights nor the Supreme Court's discovery rules overcome the protection afforded E.R. by the physician-patient privilege, the circuit court's orders denying AMITA Health's motion to quash and motion for reconsideration should be reversed. And where, as here, a "discovery order is invalid, then the contempt order, for failure to comply with that discovery order, must [also] be reversed." *Sparger v. Yamini*, 2019 IL App (1st) 180566, ¶ 16 (quoting *D.H. v. Chicago Housing Authority*, 319 Ill.App.3d 771, 773 (1st Dist. 2001)) (reversing contempt order based on refusal to produce privileged mental health records).

III. The Circuit Court Also Erred by Requiring the Disclosure of the Subpoenaed Medical Records Without Affording the Crime Victim Notice and an Opportunity to Be Heard, as Required by the Illinois Constitution and the Rights of Crime Victims and Witnesses Act

There is a second and independent basis for reversing the orders issued by the circuit court. Crime victims like E.R. are entitled, by article I, section 8.1(a)(2) of the Illinois Constitution and section 4(a)(1.5) of the Rights

of Crime Victims and Witnesses Act (725 ILCS 120/4(a)(1.5)), to notice and an opportunity to be heard before a court rules on a request for access to the victim's privileged or confidential records. These constitutional and statutory protections are animated by the rationale, which courts have recognized in a related context, that a patient "should be allowed to protect his physician-patient privilege *before* it is compromised." *Karsten v. McCray*, 157 Ill.App.3d 1, 14 (2d Dist. 1987) (emphasis in original). Thus, regardless whether the physician-patient privilege prevents the disclosure of the subpoenaed medical records, the circuit court erred by ordering their disclosure despite the State's failure to provide the patient and crime victim with the constitutionally and statutorily required notice and opportunity to be heard.

The following discussion demonstrates that the circuit court erroneously determined that the State had complied with its obligations under article I, section 8.1(a)(2) of the Constitution ("Section 8.1(a)(2)"). We then explain that the court failed to address the parallel requirements imposed by Rights of Crime Victims and Witnesses Act, and that the State clearly violated its obligations under that Act.

A. The State Violated Its Responsibility to Protect the Crime Victim's Rights Under Article I, Section 8.1(a)(2) of the Illinois Constitution

Added to the Illinois Constitution by one of the amendments to the Crime Victims' Bill of Rights that was approved by voters in 2014, Section 8.1(a)(2) gives crime victims the unequivocal "right to notice and to a

hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law." Ill. Const. art. I, § 8.1(a)(2). It is undisputed that E.R., the victim of the assault that is the subject of the criminal charges brought in this proceeding, is a crime victim under Section 8.1(a)(2). (R.3/22-23, A.89; C.17-18.) It is also undisputed that the subpoenaed medical records are privileged by law, *i.e.*, by the physician-patient privilege codified in 735 ILCS 5/8-802. (C.101-02, A.75-76.) Finally, it is undisputed that the State did not provide E.R. with notice of its subpoena seeking her medical records, seek a court ruling authorizing access to those records, or provide E.R. with an opportunity to be heard before the court ruled on the State's entitlement to access to those records. (R.14/9-14, A.100.)

The circuit court nevertheless concluded, without explanation, that "the State has complied with Article 1, Section 8.1(a)(2) of the Illinois State Constitution." (R.32/13-15, A.118.) This conclusion is indefensible. Even the State did not contend it had complied with Section 8.1(a)(2). To the contrary, the ASA acknowledged that the standard policy of the Will County State's Attorney's Office is not to provide crime victims with notice of subpoenas of their medical records. (R.14/9-14, A.100 ("we didn't send a copy of the subpoena to the victim in this matter. We don't do that."). *See also* C.102-03, A.76-77.)

This standard practice violates Section 8.1(a)(2). Rather than attempt to defend that practice, the State did not address Section 8.1(a)(2) in the brief it filed in the circuit court. (C.100-04, A.74-78.) The only excuse it ever offered was the ASA's assertion, at the initial hearing on AMITA Health's motion to quash subpoena, that "we are not required under the Illinois Constitution to notify the victim of a subpoena which is sent out for her medical records...." (R.14/9-11, A.100.) The ASA cited no supporting authority for that claim, and none exists.

The plain language of Section 8.1(a)(2), which applies to "a request for access to any of the victim's [confidential or privileged] records, information, or communications," applies to subpoenas issued by the State as well as defendants. Ill. Const. art. I, § 8.1(a)(2).

The history of Section 8.1(a)(2) demonstrates that it was expressly intended to apply to the State. After being initially proposed as a restriction on a defendant's ability to obtain privileged or confidential information about the crime victim, the language was revised to apply to any requests for access to that information. As originally introduced in the General Assembly, the provision would have given crime victims the "right to refuse to disclose to the defendant information that is privileged or confidential by law, as determined by a court of law with jurisdiction over the case." 98th Ill. Gen. Assem., House Joint Res. HC0001, 2013 Sess. (as introduced). This provision was amended to give crime victims the "right to notice and to an opportunity

to a hearing before a court ruling on a request for access to any of the victim's records, information , communications which are privileged or confidential by law. ” 98th Ill. Gen. Assem., House Joint Res. HC0001, 2014 Sess. (House Comm. Amend. No. 2). This is the language that was ultimately approved by the voters. Ill. Const. 1970, art. I, § 8.1(a)(2).

The Will County State’s Attorney’s Office needs to be disabused of the unfortunate and unfounded notion that Section 8.1(a)(2) does not apply to its subpoenas of medical records. In many instances, crime victims may consent after receiving notice that the State is requesting their medical records. Absent such consent, which would constitute a waiver of a crime victim’s rights under Section 8.1(a), the State is required to:

1. Seek a court ruling regarding its entitlement to access to a crime victim’s privileged medical records; and
2. Provide the crime victim with an opportunity to be heard before the court rules on the State’s request.

In some instances, after the crime victim is provided the constitutionally required notice and opportunity to be heard, the court may conclude that a statutory exception to the physician-patient privilege applies, allowing the records to be disclosed even if the patient/crime-victim objects. But in all instances, crime victims must be afforded the notice and opportunity to be heard required by the Constitution.

B. The State’s Failure to Provide the Crime Victim with Notice and an Opportunity to Be Heard Also Violated the Rights of Crime Victims and Witnesses Act

The constitutional protection contained in Section 8.1(a)(2) is reinforced by a parallel statutory provision in Section 4(a)(1.5) of the Rights of Crime Victims and Witnesses Act, 725 ILCS 120/4(a)(1.5). The circuit court did *not* conclude that the State had complied with this provision’s requirement that crime victims receive “notice and ... a hearing before a court ruling on a request for access to any of the victim’s records, information, or communications which are privileged or confidential by law.” Even though AMITA Health asserted a violation of Section 4(a)(1.5) in both its motion to quash subpoena and motion for reconsideration, the circuit court never addressed that ground for requiring the State to provide notice to E.R.

The State likewise did not claim that it had complied with Section 4(a)(1.5). Instead, the State argued that Section 4(a)(1.5) was inapplicable because the Act is limited to subpoenas issued by the defendant. (R.14/15-22, A.100.) The State again failed to cite any cases supporting its argument, and none exist. Nor did the State rely on the language of Section 4(a)(1.5), as that provision contains no limits on a crime victim’s “right to notice and to a hearing before a court ruling on a request for access to any of the victim’s records, information, or communications which are privileged or confidential by law.” 725 ILCS 120/4(a)(1.5).

Instead, the State relied on a different section of the Act, Section 4.5(c-5)(9), which contains elaborate procedural and substantive

requirements applicable to subpoenas issued by the defendant that go beyond the notice and opportunity to be heard required by Section 4(a)(1.5) and the Constitution. Section 4.5(c-5)(9) also specifies that a defendant must (i) make an offer of proof regarding the relevance, admissibility and materiality of the requested records, (ii) demonstrate that the records are not protected by an absolute privilege, and (iii) show that the information in the records is unavailable through other witnesses or evidence. If a court ultimately determines that a defendant's due process rights require disclosure of any portion of the records, the prosecuting attorney and the crime victim are given 30 days to seek appellate review before the records are disclosed to the defendant. 725 ILCS 120/4.5(c-5)(9).

The short answer to the State's novel, narrow interpretation of the Act is that, unlike Section 4.5(c-5)(9)'s limitation to subpoenas served by the defendant, Section 4(a)(1.5) applies to the State and defendants alike. The State would effectively rewrite Section 4(a)(1.5) by adding a limitation—*i.e.*, words narrowing that provision to “a request [*by a defendant*] for access to any of the victim's records”—in violation of the fundamental principle that “it is never proper for a court to depart from plain language by reading into a statute exceptions, limitations, or conditions which conflict with the clearly expressed legislative intent.” *Reda v. Advocate Health Care*, 199 Ill.2d 47, 60 (2002). And by rendering Section 4(a)(1.5) superfluous and wholly subsumed by Section 4.5(c-5)(9), the State's interpretation also conflicts with courts'

“obligation to avoid a construction of a statute which would render a part of it redundant or superfluous.” *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 27, citing *People v. Jones*, 223 Ill.2d 569, 594 (2006).

Section 4.5(c-5)(9) evinces the legislature’s understandable belief that crime victims require additional protections, beyond the notice and an opportunity to be heard required by Section 4(a)(1.5), when assailants seek their victims’ privileged or confidential records. But that in no way absolves the State from providing notice when it subpoenas crime victims’ medical records. Because the subpoena for E.R.’s records was served and enforced without the State providing her with the notice and opportunity to be heard required by Section 4(a)(1.5), the court’s orders denying AMITA Health’s motion to quash and motion for reconsideration, and holding AMITA Health in contempt for declining to produce the subpoenaed records, should be reversed.

IV. The Contempt Order Should Be Vacated

The circuit court’s order finding AMITA Health in civil contempt, and imposing a \$500 per day fine, should be vacated regardless of this Court’s ruling on the merits of the appeal. Where, as here, a “friendly” contempt is sought in good faith to seek appellate review, the Appellate Court will vacate the contempt finding and associated fine regardless whether it affirms or reverses on the merits. *See, e.g., People v. Shukovsky*, 128 Ill.2d 210, 231

(1988) (vacating contempt where noncompliance with subpoena was intended to facilitate appellate review of legal issue that “was not free from doubt”); *Beyer v. Parkis*, 324 Ill.App.3d 305, 321-22 (1st Dist. 2001) (“where a refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent, it is appropriate to vacate a contempt citation on appeal”).

CONCLUSION

It would have been far simpler, and far less costly, for AMITA Health to have obeyed the subpoena for E.R.’s medical records. But blind obeisance was never an option, not when the Will County State’s Attorney’s Office was claiming that the constitutional and statutory protections afforded crime victims were inapplicable to its subpoenas.

In light of the State’s Attorney’s policy, it should come as no surprise that AMITA Health has received three additional Will County subpoenas seeking medical records of crime victims who were not provided the legally prescribed notice. The recurring nature of the predicament faced by AMITA Health—and presumably other healthcare providers in Will County—underscores the importance of the opportunity provided by this case: a chance for this Court to declare, loud and clear, that the Illinois Constitution and the Rights of Crime Victims and Witnesses Act entitle crime victims, prior to the disclosure of their medical records without their consent, to (i) a court ruling on *any* requests for access to those records, including

requests contained in subpoenas served by the State, and (ii) notice and an opportunity to be heard before the court rules.

Accordingly, AMITA Health respectfully requests that this Court:

1. Reverse the circuit court's order denying AMITA Health's motion to quash subpoena;
2. Reverse the circuit court's order denying AMITA Health's motion for reconsideration, holding AMITA Health in contempt for declining to produce the subpoenaed medical records, and imposing a monetary penalty of \$500 per day until the medical records are disclosed;
3. Remand this proceeding with instructions that an order be entered granting AMITA Health's motion to quash subpoena;
4. At a minimum, vacate the contempt order and associated fine; and
5. Award AMITA Health its costs.

Dated: July 10, 2020

Respectfully submitted,

AMITA HEALTH ADVENTIST
MEDICAL CENTER, BOLINGBROOK
and ALEXIAN BROTHERS-AHS
MIDWEST REGION HEALTH CO.,

By: /s/ Steven F. Pflaum
One of Its Attorneys

Steven F. Pflaum
Dana V. M. Engel
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street
Suite 1700
Chicago, IL 60602
(312) 269-8000
spflaum@nge.com
dengel@nge.com

John W. Whitcomb
Joseph T. Monahan
Monique C. Patton
MONAHAN LAW GROUP, LLC
55 West Monroe Street, Suite 3700
Chicago, IL 60603
(312) 419-0252
jwhitcomb@monahanlawllc.com
jmonahan@monahanlawllc.com
mpatton@monahanlawllc.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). Excluding the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), this brief contains 40 pages.

/s/ Steven F. Pflaum
Steven F. Pflaum

30528153.3

APPENDIX

INDEX TO APPENDIX

Document	Date	Record Page No.	Appendix Page No.
Order Denying Motion for Reconsideration and Granting Motion for Entry of Friendly Civil Contempt	02/19/20	C 116	A 1
Order Denying Motion to Quash Subpoena	12/18/19	C 38	A 2
Notice of Appeal by AMITA Health	02/28/20	C 128	A 3
Amended Notice of Appeal by AMITA Health	03/03/20	C 132	A 7
Motion by AMITA Health to Quash Subpoena	11/07/19	Sec C 6	A 11
AMITA Health's Motion For Reconsideration or, in the Alternative, for Entry of Friendly Civil Contempt	01/09/20	C 49	A 24
Response to Motion for Reconsideration or in the Alternative, for Entry of Friendly Civil Contempt	01/24/20	C 100	A 74
AMITA Health's Reply in Support of Its Motion for Reconsideration or, in the Alternative, for Entry of Friendly Civil Contempt	02/07/20	C 108	A 80
Report of Proceedings (Initial Hearing on Motion to Quash Subpoena)	12/05/19	R 2	A 88
Report of Proceedings (Ruling on Motion to Quash Subpoena)	12/18/19	R 24	A 110
Report of Proceedings (Ruling on Motion for Reconsideration or for Entry of Friendly Civil Contempt)	02/19/20	R 29	A 115
Table of Contents of Record on Appeal	n/a	n/a	A 122

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL DISTRICT
WILL COUNTY

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.) No. 2018 CF 1946
)
ISMAEL GOMEZ-RAMIREZ,)
Defendant.)

FILED IN CIRCUIT COURT
JAN 21 2020
CLERK OF COURT

ORDER PURSUANT TO IL S. CT. RULE 304(b)(5)

This matter coming to be heard on the status of subpoena and medical records request, John W. Whitcomb, Monahan Law Group, LLC, on behalf of AMITA Health present, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED THAT:

1. AMITA Health's motion for reconsideration is denied for reasons stated in the record.
2. AMITA Health is found to be in direct civil contempt of court for failure to provide the court with subpoenaed medical records for in camera review. AMITA Health alleges that the records are subject to the physician-patient privilege, 735 ILCS 5/8-802, and with no notice and/or hearing given prior to the Court ordering the records to be produced or consent obtained from the victim/patient.
3. A monetary penalty of \$^{500.00} per day is imposed until the medical records are disclosed. *Fine is suspended for 30 day pending contentious appeal, if any, and suspended if an appeal is filed during the*
4. This is an appealable order under Illinois Supreme Court Rule 304(b)(5), finding a *person or entity in contempt of court which imposes a monetary or other penalty. pending of appeal*

2/19/20
Entered _____ Date

Judge _____ Judge's Number

Joseph T. Monahan
John W. Whitcomb
Joseph C. F. Willuweit
Monahan Law Group, LLC
55 West Monroe Street, Ste. 3700
Chicago, Illinois 60603
312-419-0252
efiling@monahanlawllc.com
ARDC No. 6204744

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY ILLINOIS

~~FILED~~
~~11/18/19~~

People
Plaintiff
vs

CASF NO 18CF1946

Ismail Gomez Ramirez
Defendant
COURT ORDER

People present by A&A Suttles, Defendant
present in person + by ~~Amrita~~ Dan Walsh
Amrita Bolingbrook is present, Counsel
for Amrita Bolingbrook is directed to produce
the medical records for an in camera inspection
Matter is continued to January 15, 2020 for
further proceedings Amrita Bolingbrook's
motion to quash was denied for reasons
stated in the record

DEC 18 2019
11:50

Attorney or Party if not represented by Attorney
Name _____
ARDC # _____
Firm Name _____
Attorney for _____
Address _____
City & Zip _____
Telephone _____

Dated 12/18/19
Entered _____
Judge _____

ANDREA LYNN CHASTEEN, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

20 FEB 28 PM 2:38
FILED
CIRCUIT COURT
WILL COUNTY, ILLINOIS

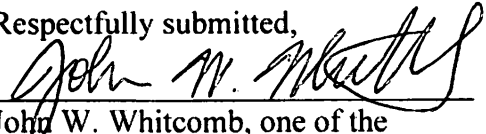
PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff -Appellee)
v.)
ISMAEL GOMEZ-RAMIREZ,)
Defendant)
(AMITA HEALTH ADVENTIST)
BOLINGBROOK HOSPITAL,)
Contemnor-Appellant)

Reviewing Court No. _____
Circuit Court No. 2018 CF 1946

NOTICE OF APPEAL

NOW COMES AMITA HEALTH ADVENTIST BOLINGBROOK HOSPITAL (“AMITA Health”), by its attorneys, Monahan Law Group LLC, and hereby appeals, pursuant to Ill.Sup. Ct. Rule 304(b)(5), the ruling by Judge Edward A. Burmila, Jr. on February 19, 2020, attached hereto, denying AMITA’s Motion for Reconsideration regarding AMITA Health’s Motion to Quash a subpoena issued to AMITA Health for privileged records and finding AMITA Health in direct civil contempt for refusal to disclose privileged medical records of a non-party for in camera review and imposing a monetary penalty in the amount of \$500.00 per day until the medical records are disclosed in the above-captioned matter.

Contemnor-Appellant, AMITA Health, hereby seeks reversal of the trial court’s rulings regarding AMITA Health’s Motion to Quash and Motion for Reconsideration and reverse the indirect civil contempt order entered against AMITA Health.

Respectfully submitted,

John W. Whitcomb, one of the
attorneys for Contemnor-Appellant,
AMITA Health

Joseph T. Monahan
John W. Whitcomb
Monique C. Patton
Monahan Law Group, LLC
55 West Monroe Street, Suite 3700
Chicago, IL 60603
(312) 419-0252
ARDC No. 6204744

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL DISTRICT
WILL COUNTY

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
ISMAEL GOMEZ-RAMIREZ,)
Defendant.)

No. 2018 CF 1946

FILED
20 FEB 28 PM 2:38
CIRCUIT COURT
WILL COUNTY, ILLINOIS

ORDER PURSUANT TO IL S. CT. RULE 304(b)(5)

This matter coming to be heard on the status of subpoena and medical records request, John W. Whitcomb, Monahan Law Group, LLC, on behalf of AMITA Health present, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED THAT:

1. AMITA Health's motion for reconsideration is denied for reasons stated in the record.
2. AMITA Health is found to be in direct civil contempt of court for failure to provide the court with subpoenaed medical records for in camera review. AMITA Health alleges that the records are subject to the physician-patient privilege, 735 ILCS 5/8-802, and with no notice and/or hearing given prior to the Court ordering the records to be produced or consent obtained from the victim/patient.
3. A monetary penalty of \$^{500.00} per day is imposed until the medical records are disclosed. *Penalty is suspended for 30 days pending continuous appeal, if any, and suspended if an appeal is filed during the pendency of appeal.*
4. This is an appealable order under Illinois Supreme Court Rule 304(b)(5), finding a *person or entity* in contempt of court which imposes a monetary or other penalty. *of appeal*

2/19/20

Entered Date

Judge Judge's Number

Joseph T. Monahan
John W. Whitcomb
Joseph C. F. Willuweit
Monahan Law Group, LLC
55 West Monroe Street, Ste. 3700
Chicago, Illinois 60603
312-419-0252
efiling@monahanlawllc.com
ARDC No. 6204744

03/03/20 09:26:18 CH

DMW

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff -Appellee)
v.)
ISMAEL GOMEZ-RAMIREZ,)
Defendant)
(AMITA HEALTH ADVENTIST)
MEDICAL CENTER, BOLINGBROOK)
and ALEXIAN BROTHERS-AHS)
MIDWEST REGION HEALTH CO.,)
Contemnors-Appellants))

Reviewing Court No. _____

Circuit Court No. 2018 CF 1946

2020 MAR -3 PM 12:03

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this 3rd day of March, 2020, we filed with the Clerk of the Circuit Court of the Twelfth Judicial Circuit, Will County, 14 West Jefferson Street, Joliet, Illinois the attached AMITA HEALTH ADVENTIST MEDICAL CENTER, BOLINGBROOK and ALEXIAN BROTHERS-AHS MIDWEST REGION HEALTH CO.'s Amended Notice of Appeal.

MONAHAN LAW GROUP, LLC

John W. Whitcomb
John W. Whitcomb

CERTIFICATE OF SERVICE

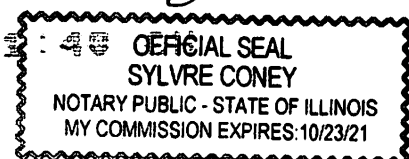
The undersigned, being first duly sworn, upon oath, deposes and states that she served this Notice of Filing and AMITA HEALTH ADVENTIST MEDICAL CENTER, BOLINGBROOK and ALEXIAN BROTHERS-AHS MIDWEST REGION HEALTH CO.'s Amended Notice of Appeal to the individuals on the attached Service List as indicated on the Service List at or before the hour of 5:00 p.m. on March 3, 2020.

Linda E. Purtell
Linda E. Purtell

John W. Whitcomb
Monique C. Patton
Joseph T. Monahan
Monahan Law Group, LLC
55 West Monroe Street, Suite 3700
Chicago, Illinois 60603
312-419-0252
ARDC: 6204744
cfiling@monahanlawllc.com

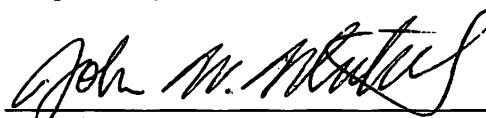
Subscribed and sworn to before me
on March 3, 2020

[Signature]
Notary Public



2020, ruling regarding AMITA Health's Motion for Reconsideration, and vacatur of the direct civil contempt order entered against AMITA Health.

Respectfully submitted,



John W. Whitcomb, one of
the attorneys for Contemnors-
Appellants, AMITA Health

John W. Whitcomb
Joseph T. Monahan
Monique C. Patton
Monahan Law Group, LLC
55 West Monroe Street, Suite 3700
Chicago, IL 60603
(312) 419-0252
Jwhitcomb@monahanlawllc.com
ARDC No. 6204744

03/06/20 15:31:40 CH

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL DISTRICT
WILL COUNTY

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
v.)
)
ISMAEL GOMEZ-RAMIREZ,)
Defendant.)

No. 2018 CF 1946

FILED
20 FEB 28 PM 2:38
APPEALS SECTION
WILL COUNTY, ILLINOIS
PH 12:05

ORDER PURSUANT TO IL S. CT. RULE 304(b)(5)

This matter coming to be heard on the status of subpoena and medical records request, John W. Whitcomb, Monahan Law Group, LLC, on behalf of AMITA Health present, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED THAT:

1. AMITA Health's motion for reconsideration is denied for reasons stated in the record.
2. AMITA Health is found to be in direct civil contempt of court for failure to provide the court with subpoenaed medical records for in camera review. AMITA Health alleges that the records are subject to the physician-patient privilege, 735 ILCS 5/8-802, and with no notice and/or hearing given prior to the Court ordering the records to be produced or consent obtained from the victim/patient.
3. A monetary penalty of \$^{500.00} per day is imposed until the medical records are disclosed. *Penalty is suspended for 30 days pending continuance of appeal, if any, and suspended if an appeal is filed during the pendency of appeal.*
4. This is an appealable order under Illinois Supreme Court Rule 304(b)(5), finding a *person or entity* in contempt of court which imposes a monetary or other penalty. *of appeal*

2/19/20

Entered Date

Judge Judge's Number

Joseph T. Monahan
John W. Whitcomb
Joseph C. F. Willuweit
Monahan Law Group, LLC
55 West Monroe Street, Ste. 3700
Chicago, Illinois 60603
312-419-0252
efiling@monahanlawllc.com
ARDC No. 6204744

APPENDIX A

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

People
Plaintiff
vs

CASE NO: 18CF1946

Ismail Gomez Ramirez
Defendant
COURT ORDER

2020 MAR -3 PM 12:05
LIT

People present by ASA Skutt's Defendant
present in person + by ~~ASA~~ Dan Walsh
Amrita Bolengrook is present. Counsel
for Amrita Bolengrook is directed to produce
the medical records for an in camera inspection
Matter is continued to January 15, 2020 for
further proceedings. Amrita Bolengrook's
motion to quash was denied for reasons
stated in the record.

Attorney or Party, if not represented by Attorney
Name _____
ARDC # _____
Firm Name _____
Attorney for _____
Address _____
City & Zip _____
Telephone _____

Dated: 12/18/19
Entered: _____
Judge _____

ANDREA LYNN CHASTEEN, CLERK OF THE CIRCUIT COURT OF WILL COUNTY

Original - Court Copy - Plaintiff Copy - Defendant

APPENDIX B

17D Rev. 12/01/16

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
) Plaintiff)
)
v.) No. 2018 CF 1946
)
ISMAEL GOMEZ-RAMIREZ)
) Defendant)

19 NOV - 7 PM 3:17
FILED

MOTION TO QUASH SUBPOENA

NOW COMES AMITA Health, by and through counsel, Monahan Law Group, LLC, presents this Motion to Quash Subpoena, and respectfully states as follows in support thereof:

BACKGROUND

1. Alexian Brothers-AHS Midwest Region Health Co. d/b/a AMITA Health (“AMITA Health”) is a financially and operationally integrated organization and is responsible for the management and operations of all facilities, providers and other business operations of Alexian Brothers Health System (“ABHS”) and Adventist Midwest Health (“AMH”). AMITA Health is a large health system in Illinois which provides a variety of health care services, across hospitals, clinics, outpatient facilities, and physician provider networks. AMITA Health includes Adventist Bolingbrook Hospital.
2. In June of 2019, a subpoena was issued by the State’s Attorney of Will County in this case commanding Keeper of Medical Records: Adventist Bolingbrook Hospital, to produce medical records and documents related to Evelyn Rodriguez. A copy of the subpoena is attached hereto as **Exhibit A**.
3. On information and belief, the non-party victim, never received a notice or participated in a hearing before the subpoena was issued for her medical records. On information and

belief, the return date for the subpoena was not on a regularly scheduled court date for the underlying case.

4. On June 24, 2019, Rosalyn Johnson, on behalf of AMITA Health, sent a letter stating “[w]e are unable to comply with your request for the disclosure of these medical records as it is missing required documentation.” A copy of the response is attached hereto as **Exhibit B**.
5. In response to the subpoena, prior to counsel appearing in court, AMITA Health has had ongoing conversations with Alexandra Molesky, Will County Assistant State’s Attorney, relating to the subpoena provided to AMITA Health and the various procedural issues in this matter.
6. Alexandra Molesky subsequently informed counsel that the Court directed counsel to appear on November 13, 2019, with a physical copy of the medical records of a non-party victim in their possession.

ARGUMENT

I. THE PHYSICIAN-PATIENT PRIVILEGE APPLIES TO THE MEDICAL RECORDS OF THE VICTIM AND ABSENT A WRITTEN AUTHORIZATION THE MEDICAL RECORDS CANNOT BE DISCLOSED TO THE COURT.

7. Section 8-802 of the Illinois Code of Civil Procedure, commonly referred to as the “physician-patient privilege,” protects patients’ medical records from disclosure without their consent. 735 ILCS 5/8-802. A copy of the statute is attached hereto as **Exhibit C**.
8. Section 8-802 of the Illinois Code of Civil Procedure provides that “[n]o physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient. 735 ILCS 5/8-802. The statute then lists 14 situations (both civil and criminal) in which the privilege does not apply.

9. The physician-patient privilege exists to encourage disclosure between a doctor and a patient and to protect the patient from invasions of privacy. *Palm v. Holocker*, 2018 IL 123152 ¶16. The purpose of the privilege is to encourage full disclosure of all medical facts by the by the patient in order to ensure the best diagnosis and outcome for the patient. *Id.*
10. The legislature has recognized that patients have an interest in maintaining confidentiality in their medical dealings with physicians. *Id.*
11. Under the statutory physician-patient privilege, no physician may disclose any information acquired in attending any patient in a professional character to serve such patient, unless certain statutory exceptions apply. *People v. Sutton*, 316 Ill.App.3d 874 (1st Dist., 2000); 735 ILCS 5/8-802.
12. The privilege extends to hospitals that possess non-party patient medical records. *Parson v. Central DuPage Hospital*, 105 Ill. App. 3d 850 (1st Dist., 1982).
13. Thus, a patient's medical records, even when relevant, are generally entitled to protection from discovery under the physician-patient privilege unless one of 14 statutorily enumerated exceptions applies. *Kraima v. Ausman*, 365 Ill.App.3d 530 (1st Dist., 2006); 735 ILCS 5/8-802.
14. Unless one of these conditions is satisfied, absent the patient's consent, a hospital may not disclose a patient's medical records, even in response to a subpoena. *Dep't of Professional Regulation v. Manos*, 326 Ill.App.3d 698 (Ill.App.Ct. 2001) (citing *People v. Bickham*, 89 Ill.2d 1, 6 (Ill. 1982)).
15. For example, it was error for one trial court to allow medical personnel to testify regarding information they obtained in treating a defendant who had drug-filled balloons in his

digestive tract, since the information fell within the scope of the physician-patient privilege and no exception applied. *People v. Kucharski*, 346 Ill.App.3d 655, (2nd Dist., 2004).

16. In this case, not one of the 14 exceptions enumerated in Section 8-802 apply to the documents requested in the subpoena provided to AMITA Health. *See* 735 ILCS 5/8-802. A copy of the statute is attached hereto as **Exhibit C**.

17. In conversation with the State's Attorney of Will County, they raised that Section 8-802, which codified the physician-patient privilege, is in the Illinois Code of Civil Procedure and supposedly would not apply to a criminal court. However, Section 8-802 makes no distinction between civil and criminal cases and, in fact, addresses both civil and criminal cases in its exceptions. 735 ILCS 5/8-802; see also *Palm v. Holocker*, 2018 IL 123152 ¶¶18, 20 (Illinois Supreme Court has extensive discussion of Section 8-802 and its applicability to criminal courts).

18. Further, although the Health Insurance Portability and Accountability Act ("HIPAA") preempts state law "contrary" to HIPAA regulations, it does *not* preempt state medical privacy laws that are "more stringent," or more protective of patient confidentiality, than HIPAA's requirements. 45 C.F.R. § 160.202.

19. The U.S. Court of Appeals affirmatively applied this analysis to Illinois law in *Northwestern Memorial Hospital v. Ashcroft*, 362 F.3d 923 (7th Cir., 2004), by affirming the District Court opinion which stated:

Illinois law concerning when nonparty patient medical records may be disclosed by hospitals or doctors is far more restrictive. The Illinois Code of Civil Procedure states that "[n]o physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient" unless one of eleven enumerated conditions exist. 735 ILCS 5/8-802. This medical privacy protection extends to hospitals that possess nonparty patient medical records. *Parkson*

v. Central DuPage Hospital, 105 Ill.App.3d 850 (Ill.App.Ct.1982). Unless one of these conditions is satisfied, absent the patient's consent, a hospital may not disclose a patient's medical records, even in response to a subpoena. *Dep't of Professional Regulation v. Manos*, 326 Ill.App.3d 698, (Ill.App.Ct.2001) (citing *People v. Bickham*, 89 Ill.2d 1, 6 (Ill. 1982)).

Nat'l. Abortion Fed'n. v. Ashcroft, 2004 U.S. Dist. LEXIS 1701 *9-11.

20. Even under HIPAA, AMITA Health is prohibited from disclosing the medical records pursuant to the subpoena issued by the State's Attorney of Will County as it does not meet the requirements for disclosures pursuant to a subpoena that is not accompanied by an order of a court or administrative tribunal. 45 C.F.R. Part 164.512(e)(1)(ii).
21. In addition to considerations under the physician-patient privilege, the Rights of Crime Victims and Witnesses Act, and the Illinois Constitution, a hospital is precluded from unlawful disclosure of records under the Hospital Licensing Act and the Medical Patient Rights Act. 210 ILCS 85/6.17; 410 ILCS 50/3.
22. Disclosure of patient medical records without proper authority risks violation of those Acts and enforcement actions by the Illinois Department of Public Health and the Illinois Department of Insurance.
23. Therefore, pursuant to the physician-privilege, the documents requested may not be disclosed absent the consent of the patient.

II. THE RIGHTS OF CRIME VICTIMS AND WITNESSES ACT AND THE CONSTITUTION OF THE STATE OF ILLINOIS DEMANDS THAT THE VICTIM HAS A RIGHT TO NOTICE AND A HEARING BEFORE THE VICTIM'S MEDICAL RECORDS MAY BE DISCLOSED.

24. As stated earlier, on information and belief, the non-party victim, never received a notice or participated in a hearing before the subpoena was issued for her medical records. On information and belief, the return date for the subpoena was not on a regularly scheduled court date for the underlying case.

25. Disclosure of the victim's documents requested by the subpoena would directly violate both the Rights of Crime Victims and Witnesses Act and the Constitution of the State of Illinois for not giving her notice or scheduling a hearing. 725 ILCS 120/4 (a)(1.5); ILCS Const. Art. 1 § 8.1(a)(2). A copy of the statute is attached hereto as **Exhibit D**; a copy of the constitutional provision is attached hereto as **Exhibit E**.
26. Both the Act and the Illinois Constitution state crime victims shall have "the right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law." *Id.*
27. In this case, the constitutional and statutory rights of a crime victim were violated when notice was not provided to the patient, nor was a hearing held on the request for the victim's records. In fact, the State did not even give notice or seek the victim's voluntary consent.
28. While the State's Attorney of Will County contend that they are the ones to enforce the victim's rights to notice and hearing and would only do so if the criminal defendant would be the one seeking the records, this position is contrary to the express language of the Act and the Illinois Constitution which gives the victim notice and hearing expressly in its provisions. 725 ILCS 120/4(a)(1.5); ILCS Const. Art. 1 § 8.1(a)(2).
29. The Illinois Code of Criminal Procedure provides that a subpoena may be issued for a date for review by the Court. 725 ILCS 5/115-17.
30. Specifically, *People v. Hart*, 194 Ill.App.3d 997 (2d Dist. 1990), raises the principle that a subpoena is insufficient if it is issued for a date that there is not a scheduled court hearing, as is the case here, because of the fact that it would deny the recipient of medical services an opportunity to contest whether there medical records should be provided to the court. *Id.* at 1002.

31. In this case, there is no authorization executed by Evelyn Rodriguez, nor was nonparty victim/patient authorization ever sought in this matter.

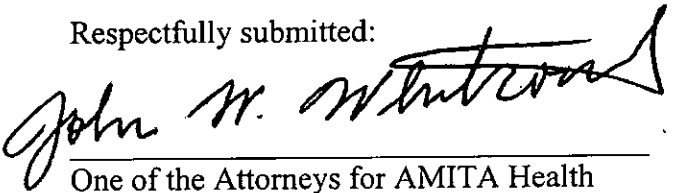
32. As such, AMITA Health does not have proper authority to disclose any medical records in response to the subpoena as requested.

33. Given the lack of proper authority to disclose records, AMITA Health respectfully requests that this Court quash the subpoena issued to AMITA Health and denies any request to produce records and documents related to Evelyn Rodriguez.

WHEREFORE, Movant respectfully requests that this Court enter an Order:

- A. Quashing the subpoena issued to AMITA Health to produce records and documents related to Evelyn Rodriguez; and
- B. For such other and further relief as this Court deems appropriate and just.

Respectfully submitted:


One of the Attorneys for AMITA Health

Joseph T. Monahan
John W. Whitcomb
Joseph C. F. Willuweit
Monahan Law Group, LLC
55 West Monroe St.
Suite 3700
Chicago, Illinois 60603
312-419-0252
ARDC No. 6204744

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)

vs.)

ISMAEL GOMEZ-RAMIREZ)

NO. 2018 CF 1946

19 NOV -7 PM 3:17
FILED
COURT CLERK
WILL COUNTY ILLINOIS

SUBPOENA

To: Adventist Bolingbrook Hospital 500 Remington Blvd. Bolingbrook, IL 60440

YOU ARE COMMANDED to send the following: Any and all records for Evelyn Rodriguez F/W dob. 11/15/87 from the date of 10/6/18 to the date of discharge. This subpoena may be complied with by providing said information by 6/28/19 at 9:00 am to the Honorable Burmila in courtroom 403 at the Will County Courthouse, 14 W. Jefferson St. Joliet, IL 60432, and no one need appear.

YOUR FAILURE TO COMPLY IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS, June 17, 2019

ANDREA LYNN CHASTEEN

(Clerk of the Circuit Court)

(Seal of Court)

By: _____
(Deputy)

I served the subpoena by handling a copy to _____ on _____, 20____. I paid the witness \$_____ for witness and mileage fees.

Signed and sworn to before me

_____, 20____

(Notary Public)

(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

Name: JAMES W. GLASGOW
BY: ASSISTANT STATE'S ATTORNEY Amie Simpson
Attorney for: People of the State of Illinois
Address: 57 N. Ottawa St. 5th Floor
City: Joliet, Illinois 60432
Telephone: 815-724-1320

REC'D
JUN 20 2019
RECEIVED



June 24, 2019

Amie Simpson, Assistant State's Attorney
57 North Ottawa Street
Joliet, IL 60432

Re: Medical Records Request – Ismael Gomez-Ramirez

Dear Amie Simpson:

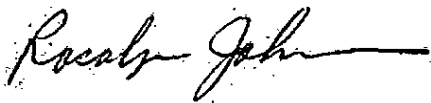
We are in receipt of your request for the medical records of Ismael Gomez-Ramirez. We are unable to comply with your request for the disclosure of these medical records as it is missing required documentation.

In order to disclose medical records pursuant to a subpoena the request must be accompanied by one of the following documents:

- (1) Patient Authorization for the disclosure;
- (2) HIPAA Qualified Protective Order; or
- (3) Satisfactory assurance that reasonable efforts have been made to ensure that the individual who is the subject of the medical record being requested has been given notice of the request. Satisfactory assurance means:
 - a. A written statement that the requestor has made a good faith attempt to provide written notice to the individual;
 - b. The notice included sufficient information about the litigation or proceeding in which the medical record is request to permit the individual to raise an objection to the court or administrative tribunal; and
 - c. The time for the individual to raise the objection to the court or administrative tribunal has elapsed, and (1) no objections were files, or (2) all objections filed by the individual have been resolved by the court or administrative tribunal and the disclosures being sought are consistent with such resolution.

Once the appropriate documentation is received, all medical records that may be produced pursuant to your request will be disclosed. If, and to the extent the medical records contain information related to mental health, developmental disabilities, AIDS/HIV, or drug and alcohol treatment, such information will be withheld from this disclosure pending receipt of a patient authorization, subpoena, court order or other documentation meeting the requirements of (a) the Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 et seq.), (b) the AIDS Confidentiality Act (410 ILCS 305/1 et seq.); or (c) state and federal law which protects certain drug and alcohol records (20 ILCS 301/30-5; 42 USC 290dd-3, 290ee-3 and 42 CFR Part 2).

Sincerely,



Rosalyn Johnson
an employee of RIRCM, a contractor of AMITA Health



FILED
19 NOV -7 PM 3:17
CLERK OF COURT
JOLIE, ILLINOIS

(735 ILCS 5/8-802) (from Ch. 110, par. 8-802)

Sec. 8-802. Physician and patient. No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the physician for malpractice, (3) with the expressed consent of the patient, or in case of his or her death or disability, of his or her personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his or her life, health, or physical condition, or as authorized by Section 8-2001.5, (4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of a document as a will of the patient, (6) (blank), (7) in actions, civil or criminal, arising from the filing of a report in compliance with the Abused and Neglected Child Reporting Act, (8) to any department, agency, institution or facility which has custody of the patient pursuant to State statute or any court order of commitment, (9) in prosecutions where written results of blood alcohol tests are admissible pursuant to Section 11-501.4 of the Illinois Vehicle Code, (10) in prosecutions where written results of blood alcohol tests are admissible under Section 5-11a of the Boat Registration and Safety Act, (11) in criminal actions arising from the filing of a report of suspected terrorist offense in compliance with Section 29D-10 (p)(7) of the Criminal Code of 2012, (12) upon the issuance of a subpoena pursuant to Section 38 of the Medical Practice Act of 1987; the issuance of a subpoena pursuant to Section 25.1 of the Illinois Dental Practice Act; the issuance of a subpoena pursuant to Section 22 of the Nursing Home Administrators Licensing and Disciplinary Act; or the issuance of a subpoena pursuant to Section 25.5 of the Workers' Compensation Act, (13) upon the issuance of a grand jury subpoena pursuant to Article 112 of the Code of Criminal Procedure of 1963, or (14) to or through a health information exchange, as that term is defined in Section 2 of the Mental Health and Developmental Disabilities Confidentiality Act, in accordance with State or federal law.

Upon disclosure under item (13) of this Section, in any criminal action where the charge is domestic battery, aggravated domestic battery, or an offense under Article 11 of the Criminal Code of 2012 or where the patient is under the age of 18 years or upon the request of the patient, the State's Attorney shall petition the court for a protective order pursuant to Supreme Court Rule 415.

In the event of a conflict between the application of this Section and the Mental Health and Developmental Disabilities Confidentiality Act to a specific situation, the provisions of the Mental Health and Developmental Disabilities Confidentiality Act shall control.

(Source: P.A. 101-13, eff. 6-12-19.)

19 NOV -7 PM 3:16

FILED



(725 ILCS 120/4) (from Ch. 38, par. 1404)

Sec. 4. Rights of crime victims.

(a) Crime victims shall have the following rights:

(1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.

(1.5) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.

(2) The right to timely notification of all court proceedings.

(3) The right to communicate with the prosecution.

(4) The right to be heard at any post-arraignment court proceeding in which a right of the victim is at issue and any court proceeding involving a post-arraignment release decision, plea, or sentencing.

(5) The right to be notified of the conviction, the sentence, the imprisonment and the release of the accused.

(6) The right to the timely disposition of the case following the arrest of the accused.

(7) The right to be reasonably protected from the accused through the criminal justice process.

(7.5) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.

(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

(9) The right to have present at all court proceedings, including proceedings under the Juvenile Court Act of 1987, subject to the rules of evidence, an advocate and other support person of the victim's choice.

(10) The right to restitution.

(b) Any law enforcement agency that investigates an offense committed in this State shall provide a crime victim with a written statement and explanation of the rights of crime victims under this amendatory Act of the 99th General Assembly within 48 hours of law enforcement's initial contact with a victim. The statement shall include information about crime victim compensation, including how to contact the Office of the Illinois Attorney General to file a claim, and appropriate referrals to local and State programs that provide victim services. The content of the statement shall be provided to law enforcement by the Attorney General. Law enforcement shall also provide a crime victim with a sign-off sheet that the victim shall sign and date as an acknowledgement that he or she has been furnished with information and an explanation of the rights of crime victims and compensation set forth in this Act.

(b-5) Upon the request of the victim, the law enforcement agency having jurisdiction shall provide a free copy of the police report concerning the victim's incident, as soon as practicable, but in no event later than 5 business days from

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

19 NOV - 7 PM 3: 16

FILED



the request.

(c) The Clerk of the Circuit Court shall post the rights of crime victims set forth in Article I, Section 8.1(a) of the Illinois Constitution and subsection (a) of this Section within 3 feet of the door to any courtroom where criminal proceedings are conducted. The clerk may also post the rights in other locations in the courthouse.

(d) At any point, the victim has the right to retain a victim's attorney who may be present during all stages of any interview, investigation, or other interaction with representatives of the criminal justice system. Treatment of the victim should not be affected or altered in any way as a result of the victim's decision to exercise this right.

(Source: P.A. 99-413, eff. 8-20-15; 100-1087, eff. 1-1-19.)

Illinois Const., Art. I, § 8.1

Statutes current through P.A. 101-309, except for portions of P.A. 101-48, 101-221, 101-238, and 101-275 of the 2019 Regular Session of the 101st General Assembly

Illinois Compiled Statutes Annotated > Constitution of the State of Illinois > Article I BILL OF RIGHTS

Section 8.1. Crime Victims' Rights

FILED
19 NOV - 7 PM 3:16
CLERK OF COURT
WILLIAMSBURG ILLINOIS

(a) Crime victims, as defined by law, shall have the following rights:

- (1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.
- (2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.
- (3) The right to timely notification of court proceedings.
- (4) The right to communicate with the prosecution.
- (5) The right to be heard at any post-arraignment court proceeding in which a right of the victim is at issue and any court proceeding involving a post-arraignment release decision, plea, or sentencing.
- (6) The right to notified of the conviction, the sentence, the imprisonment, and the release of the accused.
- (7) The right to timely disposition of the case following the arrest of the accused.
- (8) The right to be reasonably protected from the accused throughout the criminal justice process.
- (9) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.
- (10) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.
- (11) The right to have present at all court proceedings, subject to the rules of evidence, an advocate and other support person of the victim's choice.
- (12) The right to restitution.

(b) The victim has standing to assert the rights enumerated in subsection (a) in any court exercising jurisdiction over the case. The court shall promptly rule on a victim's request. The victim does not have party status. The accused does not have standing to assert the rights of a victim. The court shall not appoint an attorney for the victim under this Section. Nothing in this Section shall be construed to alter the powers, duties, and responsibilities of the prosecuting attorney.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or any law enacted under this Section creates a cause of action in equity or at law for compensation, attorney's fees, or damages against the State, a political subdivision of the State, an officer, employee, or agent of the State or of any political subdivision of the State, or an officer or employee of the court.



STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

FILED
2020 JAN 9 AM 8:42
CLERK OF CIRCUIT COURT
WILL COUNTY, ILL.

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff)
v.)
ISMAEL GOMEZ-RAMIREZ,)
Defendant)

No. 2018 CF 1946

**AMITA HEALTH'S MOTION FOR RECONSIDERATION OR,
IN THE ALTERNATIVE, FOR ENTRY OF FRIENDLY CIVIL CONTEMPT**

NOW COMES AMITA Health, by and through counsel, Monahan Law Group, LLC, and presents this Motion for Reconsideration or, in the Alternative, for Entry of Friendly Civil Contempt, and respectfully states as follows:

INTRODUCTION

1. AMITA Health filed a motion to quash a subpoena served on it by the Will County State's Attorney seeking the production of records pertaining to the hospitalization of Evelyn Rodriguez at the AMITA Health Adventist Bolingbrook Hospital in October 2018. Ms. Rodriguez is the victim of the offense that is the subject of the above-captioned proceeding. AMITA Health asserted that (1) the physician-patient privilege contained in Section 8-802 of the Code of Civil Procedure precludes disclosure of Ms. Rodriguez's medical records without her consent, and (2) the State's Attorney had failed to comply with the provisions in the Illinois Constitution and the Rights of Crime Victims and Witnesses Act requiring that Ms. Rodriguez receive notice and a hearing prior to disclosure of her medical records. (A copy of AMITA Health's motion to quash is attached as **Exhibit A.**)

01/10/20 12:41:46 CH

2. On December 18, 2019, this Court denied the motion to quash, finding that “both Section 8 of the Illinois State Constitution and ... the 6th Amendment in the United States Constitution say that defendants in criminal cases are entitled to compulsory process.” *See* Transcript of December 18, 2019 Hearing attached as **Exhibit B**. The Court entered an order (the “Order”) denying the motion and directing AMITA Health to produce the subpoenaed medical records for *in camera* review at a hearing scheduled for January 15, 2020. *See* Order attached as **Exhibit C**.

3. AMITA Health brings this motion for two purposes:

- a. First, to respectfully urge the Court to reconsider its denial of AMITA Health’s motion to quash because (i) the State lacks standing to assert the defendant’s Sixth Amendment rights and (ii) the Court’s ruling conflicts with the Illinois Supreme Court decision in *People v., Foggy*, 121 Ill.2d 337 (1988), quashing a subpoena on the basis that the defendant’s constitutional due process and confrontational rights did not require breaching the privilege pertaining to the victim’s communications with her rape counselor; and
- b. Second, to seek entry of a “friendly” civil contempt, if the Court adheres to its ruling on the motion to quash, in order to facilitate appellate review of the important constitutional, statutory, and public policy issues raised by this controversy.

ARGUMENT

I. The State Cannot Rely on the Defendant's Constitutional Rights as Justification for Ignoring Ms. Rodriguez's Rights Protected by the Illinois Constitution, the Rights of Crime Victims and Witnesses Act, and the Physician-Patient Privilege

4. The defendant's Sixth Amendment rights cannot override Ms. Rodriguez's rights protected by the physician-patient privilege, the Illinois Constitution, and the Rights of Crime Victims and Witnesses Act because the State, and not the defendant, subpoenaed Ms. Rodriguez's medical records. No authority has been cited, and it appears that none exists, suggesting that the State has standing to invoke a defendant's Sixth Amendment rights. In any event, the State sought the records in hopes of bolstering its case against the defendant, not to attempt to assist the defendant.

5. The Sixth Amendment would not override the constitutional and statutory protections pertaining to Ms. Rodriguez's medical records even if the defendant had issued the subpoena. In *People v. Foggy*, 121 Ill.2d 337 (1988), the Illinois Supreme Court held that the Sixth Amendment did not require disclosure of otherwise privileged communications with a rape counselor. "The ability to question adverse witnesses ... does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony." *Id.* at 345-46 (quoting *Pennsylvania v. Ritchie*, 480 U.S. 39, 52-53 (1987)). Accordingly, the Court quashed a subpoena *duces tecum* served by the defendant on the organization that provided counseling to the rape victim.

6. Similarly, in this case the defendant's ability to question Ms. Rodriguez at trial does not include the power to require disclosure of her privileged medical records. This court, like the trial court in *Foggy*, should quash the subpoena of the victim's records. *See also People v. Bean*,

137 Ill.2d 65, 93 (1990) (defendant's Sixth Amendment rights were not violated by being denied access to witness's mental health records).¹

7. Accordingly, AMITA Health respectfully requests the Court to reconsider its denial of the motion to quash subpoena and, upon reconsideration, to grant that motion.

II. In the Alternative, the Court Should Hold AMITA Health in Friendly Civil Contempt to Enable Appellate Review of Whether the Sixth Amendment Overrides Ms. Rodriguez's Constitutional and Statutory Rights Regarding Notice, an Opportunity to Be Heard, and Disclosure of Her Medical Records

8. This proceeding involves the second subpoena served by the Will County State's Attorney on AMITA Health in recent months that was not preceded by notice to the victim-patient, an opportunity for the victim to be heard, a HIPAA protective order, or the victim's consent. Far from being an aberration, this situation apparently reflects the standard practice and official policy of the Will County State's Attorney's office. *See* Transcript of December 5, 2019 Hearing at 13 (ASA Molesky acknowledges that, based on their interpretation of the Illinois Constitution, her office "as a matter of practice ... [does not] notify the victim of a subpoena which is sent out for her medical records.... We don't do that."). (A copy of that transcript is attached as **Exhibit D**.)

9. If the Court were to decline to reconsider the order denying the motion to quash, AMITA Health would feel constrained to seek appellate review so that definitive guidance can be obtained regarding whether (a) the State is required to provide victims with notice and an opportunity to be heard before a court decides whether to order disclosure of victims' medical records sought by the State, and (b) the Sixth Amendment supersedes the confidentiality of those

¹ While a crime victim may not always be able to prevent the disclosure of their confidential information, it is difficult to conceive of a situation in which a victim could lawfully be deprived of their right to notice and an opportunity to be heard before a court rules on a request for access to that information. *See* Ill. Const. art. I, sec. 8.1(a)(2); 725 ILCS 120/4(a)(1.5). Surely there was no exigency present in this case that required a decision before Ms. Rodriguez received the requisite notice and opportunity to be heard.

records pursuant to the physician-patient privilege. *See Parkson v. Central Du Page Hospital*, 105 Ill.App.3d 850, 853-54 (1st Dist. 1982) (“the hospital was mandated to assert the physician-patient privilege to insure that the patients’ records would be protected in accordance with the intentions of our statute”).

10. As explained below, entry of a “friendly” civil contempt order, imposing a nominal monetary sanction for non-compliance with a court order requiring disclosure of information asserted to be protected against disclosure, is the standard and appropriate vehicle for obtaining appellate review in this type of situation.

A. A “friendly” civil contempt order should be entered to facilitate appellate review of the order denying AMITA Health’s motion to quash

11. For the sole purpose of facilitating appellate review, AMITA Health would respectfully decline to comply with the order denying its motion to quash and ordering it to produce the subpoenaed records for *in camera* review. The Court would then be requested to hold AMITA Health in direct civil contempt and impose a nominal monetary fine in order to enable AMITA Health to appeal the Court’s denial of its motion to quash subpoena. *See* Supreme Court Rule 304(b)(5) (authorizing appeal from “[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty”).

12. This is the routine procedure for obtaining appellate review of orders requiring disclosure of materials that are asserted to be privileged or otherwise protected against disclosure. “[I]t is well-settled that the correctness of a discovery order may be tested through contempt proceedings.” *Norskog v. Pfiel*, 197 Ill.2d 60, 69 (2001) (appeal from contempt order imposing \$25 fine on defendants for declining to identify mental health therapists and disclose information regarding diagnosis and treatment). *See also People v. Shukovsky*, 128 Ill.2d 210 (1988) (appeal

from contempt order and \$10 fine for refusal to comply with order denying motion to quash subpoena *duces tecum*).

13. This “friendly” contempt procedure has been employed in cases, like this one, involving a subpoena for medical records of a non-party. *See, e.g., D.H. v. Chicago Housing Auth.*, 319 Ill.App.3d 771 (1st Dist. 2001) (appeal from contempt order and \$50 fine for refusal to submit medical and educational records for *in camera* review).

B. The contemnor, for purposes of the requested friendly contempt, should be AMITA Health rather than an individual

14. At the hearing in this matter held on December 18, 2019, the Court directed counsel for AMITA Health to bring with him to the next hearing “whoever it is that I’m going to hold in contempt.” Exh. B at 3.

15. In accordance with the Court’s order, counsel for AMITA Health will be accompanied at the January 15, 2020 hearing by Ryan Benz, AMITA Health’s Vice President and Senior Associate General Counsel. However, AMITA Health respectfully requests that contempt be entered against AMITA Health itself, rather than against Mr. Benz or any individual.

16. Where, as here, an organization is responsible for the failure to comply with a court order, the organization rather than an individual should be held in contempt. For example, in *Nielson v. Swedish American Hosp.*, 2017 IL App (2d) 160743, a hospital was held in contempt after it declined to comply with an order requiring it to produce documents that it contended were privileged. *Id.*, ¶ 1.

17. Similarly, in *Brown v. Advocate Health & Hosps. Corp.*, 2017 IL App (1st) 161918, a hospital was held in friendly contempt and fined \$100 after it refused to produce insurance-related documents. *Id.*, ¶ 1. *Accord, Parkson v. Central Du Page Hospital*, 105 Ill.App.3d 850, 852 (1st Dist. 1982) (friendly contempt entered against hospital and not individuals); *Robert R.*

McCormick Found. v. Arthur J. Gallagher Risk Mgt. Svcs., 2019 IL 123936, ¶ 15 (friendly contempt entered against foundations and not individuals).

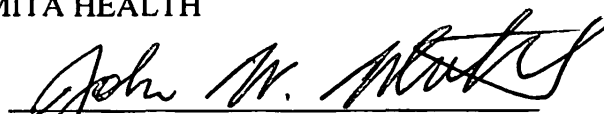
WHEREFORE, AMITA Health respectfully requests that this Honorable Court enter an order:

1. Reconsidering and granting AMITA Health’s motion to quash; or
2. If the Court declines to reconsider its denial of AMITA Health’s motion to quash:
 - a. Finding that AMITA Health has declined to comply with the Order for the purpose of obtaining appellate review of that ruling;
 - b. Holding AMITA Health in friendly direct civil contempt of court; and
 - c. Assessing a fine of \$1 per day against AMITA Health, subject to being purged by AMITA Health’s production of the subpoenaed medical records for *in camera* review or by operation of law, whichever comes first; and
3. For such other and further relief as this Court deems appropriate and just.

Dated: January 8, 2020

Respectfully submitted

AMITA HEALTH

By 
One of Its Attorneys

Joseph T. Monahan
John W. Whitcomb
Monique C. Patton
Monahan Law Group, LLC
55 West Monroe Street, Suite 3700
Chicago, Illinois 60603
312-419-0252
ARDC No. 6204744

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY

FILED
FILED
2020 JAN -9 AND 8:42 NOV -7 PM 3:17
CLERK CIRCUIT COURT
WILL COUNTY ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff)
v.) No. 2018 CF 1946
ISMAEL GOMEZ-RAMIREZ)
Defendant)

MOTION TO QUASH SUBPOENA

NOW COMES AMITA Health, by and through counsel, Monahan Law Group, LLC, presents this Motion to Quash Subpoena, and respectfully states as follows in support thereof:

BACKGROUND

1. Alexian Brothers-AHS Midwest Region Health Co. d/b/a AMITA Health ("AMITA Health") is a financially and operationally integrated organization and is responsible for the management and operations of all facilities, providers and other business operations of Alexian Brothers Health System ("ABHS") and Adventist Midwest Health ("AMH"). AMITA Health is a large health system in Illinois which provides a variety of health care services, across hospitals, clinics, outpatient facilities, and physician provider networks. AMITA Health includes Adventist Bolingbrook Hospital.
2. In June of 2019, a subpoena was issued by the State's Attorney of Will County in this case commanding Keeper of Medical Records: Adventist Bolingbrook Hospital, to produce medical records and documents related to Evelyn Rodriguez. A copy of the subpoena is attached hereto as Exhibit A.
3. On information and belief, the non-party victim, never received a notice or participated in a hearing before the subpoena was issued for her medical records. On information and



belief, the return date for the subpoena was not on a regularly scheduled court date for the underlying case.

4. On June 24, 2019, Rosalyn Johnson, on behalf of AMITA Health, sent a letter stating “[w]e are unable to comply with your request for the disclosure of these medical records as it is missing required documentation.” A copy of the response is attached hereto as **Exhibit B**.
5. In response to the subpoena, prior to counsel appearing in court, AMITA Health has had ongoing conversations with Alexandra Molesky, Will County Assistant State’s Attorney, relating to the subpoena provided to AMITA Health and the various procedural issues in this matter.
6. Alexandra Molesky subsequently informed counsel that the Court directed counsel to appear on November 13, 2019, with a physical copy of the medical records of a non-party victim in their possession.

ARGUMENT

- I. **THE PHYSICIAN-PATIENT PRIVILEGE APPLIES TO THE MEDICAL RECORDS OF THE VICTIM AND ABSENT A WRITTEN AUTHORIZATION THE MEDICAL RECORDS CANNOT BE DISCLOSED TO THE COURT.**
7. Section 8-802 of the Illinois Code of Civil Procedure, commonly referred to as the “physician-patient privilege,” protects patients’ medical records from disclosure without their consent. 735 ILCS 5/8-802. A copy of the statute is attached hereto as **Exhibit C**.
8. Section 8-802 of the Illinois Code of Civil Procedure provides that “[n]o physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient. 735 ILCS 5/8-802. The statute then lists 14 situations (both civil and criminal) in which the privilege does not apply.

9. The physician-patient privilege exists to encourage disclosure between a doctor and a patient and to protect the patient from invasions of privacy. *Palm v. Holocker*, 2018 IL 123152 ¶16. The purpose of the privilege is to encourage full disclosure of all medical facts by the by the patient in order to ensure the best diagnosis and outcome for the patient. *Id.*
10. The legislature has recognized that patients have an interest in maintaining confidentiality in their medical dealings with physicians. *Id.*
11. Under the statutory physician-patient privilege, no physician may disclose any information acquired in attending any patient in a professional character to serve such patient, unless certain statutory exceptions apply. *People v. Sutton*, 316 Ill.App.3d 874 (1st Dist., 2000); 735 ILCS 5/8-802.
12. The privilege extends to hospitals that possess non-party patient medical records. *Parson v. Central DuPage Hospital*, 105 Ill. App. 3d 850 (1st Dist., 1982).
13. Thus, a patient's medical records, even when relevant, are generally entitled to protection from discovery under the physician-patient privilege unless one of 14 statutorily enumerated exceptions applies. *Kraima v. Ausman*, 365 Ill.App.3d 530 (1st Dist., 2006); 735 ILCS 5/8-802.
14. Unless one of these conditions is satisfied, absent the patient's consent, a hospital may not disclose a patient's medical records, even in response to a subpoena. *Dep't of Professional Regulation v. Manos*, 326 Ill.App.3d 698 (Ill.App.Ct. 2001) (citing *People v. Bickham*, 89 Ill.2d 1, 6 (Ill. 1982)).
15. For example, it was error for one trial court to allow medical personnel to testify regarding information they obtained in treating a defendant who had drug-filled balloons in his

digestive tract, since the information fell within the scope of the physician-patient privilege and no exception applied. *People v. Kucharski*, 346 Ill.App.3d 655, (2nd Dist., 2004).

16. In this case, not one of the 14 exceptions enumerated in Section 8-802 apply to the documents requested in the subpoena provided to AMITA Health. *See* 735 ILCS 5/8-802.

A copy of the statute is attached hereto as **Exhibit C**.

17. In conversation with the State's Attorney of Will County, they raised that Section 8-802, which codified the physician-patient privilege, is in the Illinois Code of Civil Procedure and supposedly would not apply to a criminal court. However, Section 8-802 makes no distinction between civil and criminal cases and, in fact, addresses both civil and criminal cases in its exceptions. 735 ILCS 5/8-802; see also *Palm v. Holocker*, 2018 IL 123152 ¶18, 20 (Illinois Supreme Court has extensive discussion of Section 8-802 and its applicability to criminal courts).

18. Further, although the Health Insurance Portability and Accountability Act ("HIPAA") preempts state law "contrary" to HIPAA regulations, it does *not* preempt state medical privacy laws that are "more stringent," or more protective of patient confidentiality, than HIPAA's requirements. 45 C.F.R. § 160.202.

19. The U.S. Court of Appeals affirmatively applied this analysis to Illinois law in *Northwestern Memorial Hospital v. Ashcroft*, 362 F.3d 923 (7th Cir., 2004), by affirming the District Court opinion which stated:

Illinois law concerning when nonparty patient medical records may be disclosed by hospitals or doctors is far more restrictive. The Illinois Code of Civil Procedure states that "[n]o physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient" unless one of eleven enumerated conditions exist. 735 ILCS 5/8-802. This medical privacy protection extends to hospitals that possess nonparty patient medical records. *Parkson*

v. Central DuPage Hospital, 105 Ill.App.3d 850 (Ill.App.Ct.1982). Unless one of these conditions is satisfied, absent the patient's consent, a hospital may not disclose a patient's medical records, even in response to a subpoena. *Dep't of Professional Regulation v. Manos*, 326 Ill.App.3d 698, (Ill.App.Ct.2001) (citing *People v. Bickham*, 89 Ill.2d 1, 6 (Ill. 1982)).

Nat'l. Abortion Fed'n. v. Ashcroft, 2004 U.S. Dist. LEXIS 1701 *9-11.

20. Even under HIPAA, AMITA Health is prohibited from disclosing the medical records pursuant to the subpoena issued by the State's Attorney of Will County as it does not meet the requirements for disclosures pursuant to a subpoena that is not accompanied by an order of a court or administrative tribunal. 45 C.F.R. Part 164.512(e)(1)(ii).
21. In addition to considerations under the physician-patient privilege, the Rights of Crime Victims and Witnesses Act, and the Illinois Constitution, a hospital is precluded from unlawful disclosure of records under the Hospital Licensing Act and the Medical Patient Rights Act. 210 ILCS 85/6.17; 410 ILCS 50/3.
22. Disclosure of patient medical records without proper authority risks violation of those Acts and enforcement actions by the Illinois Department of Public Health and the Illinois Department of Insurance.
23. Therefore, pursuant to the physician-privilege, the documents requested may not be disclosed absent the consent of the patient.

II. THE RIGHTS OF CRIME VICTIMS AND WITNESSES ACT AND THE CONSTITUTION OF THE STATE OF ILLINOIS DEMANDS THAT THE VICTIM HAS A RIGHT TO NOTICE AND A HEARING BEFORE THE VICTIM'S MEDICAL RECORDS MAY BE DISCLOSED.

24. As stated earlier, on information and belief, the non-party victim, never received a notice or participated in a hearing before the subpoena was issued for her medical records. On information and belief, the return date for the subpoena was not on a regularly scheduled court date for the underlying case.

01/10/20 5:22:44 PM

25. Disclosure of the victim's documents requested by the subpoena would directly violate both the Rights of Crime Victims and Witnesses Act and the Constitution of the State of Illinois for not giving her notice or scheduling a hearing. 725 ILCS 120/4 (a)(1.5); ILCS Const. Art. 1 § 8.1(a)(2). A copy of the statute is attached hereto as **Exhibit D**; a copy of the constitutional provision is attached hereto as **Exhibit E**.
26. Both the Act and the Illinois Constitution state crime victims shall have "the right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law." *Id.*
27. In this case, the constitutional and statutory rights of a crime victim were violated when notice was not provided to the patient, nor was a hearing held on the request for the victim's records. In fact, the State did not even give notice or seek the victim's voluntary consent.
28. While the State's Attorney of Will County contend that they are the ones to enforce the victim's rights to notice and hearing and would only do so if the criminal defendant would be the one seeking the records, this position is contrary to the express language of the Act and the Illinois Constitution which gives the victim notice and hearing expressly in its provisions. 725 ILCS 120/4(a)(1.5); ILCS Const. Art. 1 § 8.1(a)(2).
29. The Illinois Code of Criminal Procedure provides that a subpoena may be issued for a date for review by the Court. 725 ILCS 5/115-17.
30. Specifically, *People v. Hart*, 194 Ill.App.3d 997 (2d Dist. 1990), raises the principle that a subpoena is insufficient if it is issued for a date that there is not a scheduled court hearing, as is the case here, because of the fact that it would deny the recipient of medical services an opportunity to contest whether there medical records should be provided to the court. *Id. at* 1002.

31. In this case, there is no authorization executed by Evelyn Rodriguez, nor was nonparty victim/patient authorization ever sought in this matter.

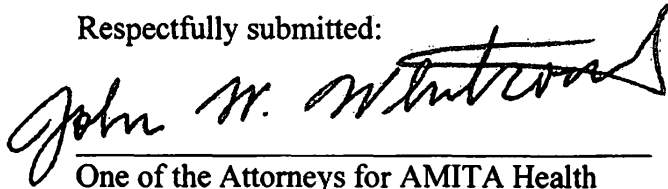
32. As such, AMITA Health does not have proper authority to disclose any medical records in response to the subpoena as requested.

33. Given the lack of proper authority to disclose records, AMITA Health respectfully requests that this Court quash the subpoena issued to AMITA Health and denies any request to produce records and documents related to Evelyn Rodriguez.

WHEREFORE, Movant respectfully requests that this Court enter an Order:

- A. Quashing the subpoena issued to AMITA Health to produce records and documents related to Evelyn Rodriguez; and
- B. For such other and further relief as this Court deems appropriate and just.

Respectfully submitted:


One of the Attorneys for AMITA Health

Joseph T. Monahan
John W. Whitcomb
Joseph C. F. Willuweit
Monahan Law Group, LLC
55 West Monroe St.
Suite 3700
Chicago, Illinois 60603
312-419-0252
ARDC No. 6204744

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)
)
 vs.) NO. 2018 CF 1946
)
 ISMAEL GOMEZ-RAMIREZ)

SUBPOENA

To: Adventist Bolingbrook Hospital 500 Remington Blvd. Bolingbrook, IL 60410

YOU ARE COMMANDED to send the following: Any and all records for Evelyn Rodriguez F/W dob. 11/15/87 from the date of 10/6/18 to the date of discharge. This subpoena may be complied with by providing said information by 6/28/19 at 9:00 am to the Honorable Burmila in courtroom 403 at the Will County Courthouse, 14 W. Jefferson St. Joliet, IL 60432, and no one need appear.

YOUR FAILURE TO COMPLY IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

WITNESS, June 17, 2019

ANDREA LYNN CHASTEEN

(Clerk of the Circuit Court)

(Seal of Court)

By: _____
(Deputy)

I served the subpoena by handing a copy to _____ on _____, 20____. I paid the witness \$_____ for witness and mileage fees.

Signed and sworn to before me

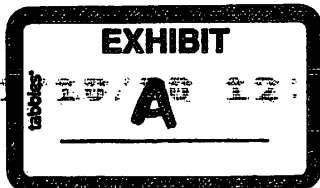
_____, 20____

(Notary Public)

(Plaintiff's attorney or plaintiff if he is not represented by an attorney)

Name: JAMES W. GLASGOW
BY: ASSISTANT STATE'S ATTORNEY Amie Simpson
Attorney for: People of the State of Illinois
Address: 57 N. Ottawa St. 5th Floor
City: Joliet, Illinois 60432
Telephone: 815-724-1320

FILED
2020 JAN -9 AM 8:42
CLERK CIRCUIT COURT TWELFTH JUDICIAL CIRCUIT
WILL COUNTY ILLINOIS
60432



19 NOV -7 PM 3:17
CLERK OF COURT
JOLIET ILLINOIS

June 24, 2019

Amie Simpson, Assistant State's Attorney
57 North Ottawa Street
Joliet, IL 60432

Re: Medical Records Request – Ismael Gomez-Ramirez

Dear Amie Simpson:

We are in receipt of your request for the medical records of Ismael Gomez-Ramirez. We are unable to comply with your request for the disclosure of these medical records as it is missing required documentation.

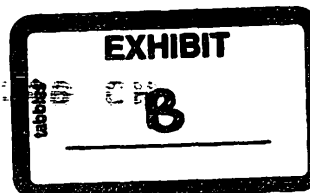
In order to disclose medical records pursuant to a subpoena the request must be accompanied by one of the following documents:

- (1) Patient Authorization for the disclosure;
- (2) HIPAA Qualified Protective Order; or
- (3) Satisfactory assurance that reasonable efforts have been made to ensure that the individual who is the subject of the medical record being requested has been given notice of the request. Satisfactory assurance means:
 - a. A written statement that the requestor has made a good faith attempt to provide written notice to the individual;
 - b. The notice included sufficient information about the litigation or proceeding in which the medical record is request to permit the individual to raise an objection to the court or administrative tribunal; and
 - c. The time for the individual to raise the objection to the court or administrative tribunal has elapsed, and (1) no objections were files, or (2) all objections filed by the individual have been resolved by the court or administrative tribunal and the disclosures being sought are consistent with such resolution.

Once the appropriate documentation is received, all medical records that may be produced pursuant to your request will be disclosed. If, and to the extent the medical records contain information related to mental health, developmental disabilities, AIDS/HIV, or drug and alcohol treatment, such information will be withheld from this disclosure pending receipt of a patient authorization, subpoena, court order or other documentation meeting the requirements of (a) the Illinois Mental Health & Developmental Disabilities Confidentiality Act (740 ILCS 110/1 et seq.), (b) the AIDS Confidentiality Act (410 ILCS 305/1 et seq.); or (c) state and federal law which protects certain drug and alcohol records (20 ILCS 301/30-5; 42 USC 290dd-3, 290ee-3 and 42 CFR Part 2).

Sincerely,

Rosalyn Johnson
an employee of R1RCM, a contractor of AMITA Health



(735 ILCS 5/8-802) (from Ch. 110, par. 8-802)

Sec. 8-802. Physician and patient. No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the physician for malpractice, (3) with the expressed consent of the patient, or in case of his or her death or disability, of his or her personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his or her life, health, or physical condition, or as authorized by Section 8-2001.5, (4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of a document as a will of the patient, (6) (blank), (7) in actions, civil or criminal, arising from the filing of a report in compliance with the Abused and Neglected Child Reporting Act, (8) to any department, agency, institution or facility which has custody of the patient pursuant to State statute or any court order of commitment, (9) in prosecutions where written results of blood alcohol tests are admissible pursuant to Section 11-501.4 of the Illinois Vehicle Code, (10) in prosecutions where written results of blood alcohol tests are admissible under Section 5-11a of the Boat Registration and Safety Act, (11) in criminal actions arising from the filing of a report of suspected terrorist offense in compliance with Section 29D-10 (p)(7) of the Criminal Code of 2012, (12) upon the issuance of a subpoena pursuant to Section 38 of the Medical Practice Act of 1987; the issuance of a subpoena pursuant to Section 25.1 of the Illinois Dental Practice Act; the issuance of a subpoena pursuant to Section 22 of the Nursing Home Administrators Licensing and Disciplinary Act; or the issuance of a subpoena pursuant to Section 25.5 of the Workers' Compensation Act, (13) upon the issuance of a grand jury subpoena pursuant to Article 112 of the Code of Criminal Procedure of 1963, or (14) to or through a health information exchange, as that term is defined in Section 2 of the Mental Health and Developmental Disabilities Confidentiality Act, in accordance with State or federal law.

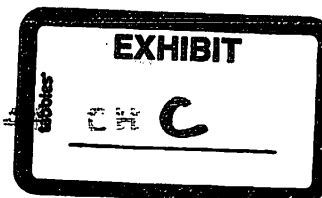
Upon disclosure under item (13) of this Section, in any criminal action where the charge is domestic battery, aggravated domestic battery, or an offense under Article 11 of the Criminal Code of 2012 or where the patient is under the age of 18 years or upon the request of the patient, the State's Attorney shall petition the court for a protective order pursuant to Supreme Court Rule 415.

In the event of a conflict between the application of this Section and the Mental Health and Developmental Disabilities Confidentiality Act to a specific situation, the provisions of the Mental Health and Developmental Disabilities Confidentiality Act shall control.

(Source: P.A. 101-13, eff. 6-12-19.)

19 NOV -7 PM 3:17

735 ILCS 5/8-802



01/10/20 12:41:46 CH

(725 ILCS 120/4) (from Ch. 38, par. 1404)

Sec. 4. Rights of crime victims.

(a) Crime victims shall have the following rights:

(1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.

(1.5) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.

(2) The right to timely notification of all court proceedings.

(3) The right to communicate with the prosecution.

(4) The right to be heard at any post-arraignment court proceeding in which a right of the victim is at issue and any court proceeding involving a post-arraignment release decision, plea, or sentencing.

(5) The right to be notified of the conviction, the sentence, the imprisonment and the release of the accused.

(6) The right to the timely disposition of the case following the arrest of the accused.

(7) The right to be reasonably protected from the accused through the criminal justice process.

(7.5) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.

(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

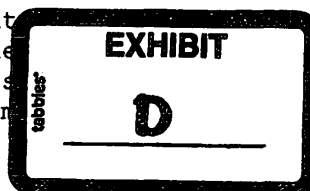
(9) The right to have present at all court proceedings, including proceedings under the Juvenile Court Act of 1987, subject to the rules of evidence, an advocate and other support person of the victim's choice.

(10) The right to restitution.

(b) Any law enforcement agency that investigates an offense committed in this State shall provide a crime victim with a written statement and explanation of the rights of crime victims under this amendatory Act of the 99th General Assembly within 48 hours of law enforcement's initial contact with a victim. The statement shall include information about crime victim compensation, including how to contact the Office of the Illinois Attorney General to file a claim, and appropriate referrals to local and State programs that provide victim services. The content of the statement shall be provided to law enforcement by the Attorney General. Law enforcement shall also provide a crime victim with a sign-off sheet that the victim shall sign and date as an acknowledgement that he or she has been furnished with information and an explanation of the rights of crime victims and compensation set forth in this Act.

(b-5) Upon the request of the victim, the law enforcement agency having jurisdiction shall provide a free copy of the police report concerning the victim's incident, as soon as practicable, but in no event later than 5 business days from

19 NOV -7 PM 3:17
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



the request.

(c) The Clerk of the Circuit Court shall post the rights of crime victims set forth in Article I, Section 8.1(a) of the Illinois Constitution and subsection (a) of this Section within 3 feet of the door to any courtroom where criminal proceedings are conducted. The clerk may also post the rights in other locations in the courthouse.

(d) At any point, the victim has the right to retain a victim's attorney who may be present during all stages of any interview, investigation, or other interaction with representatives of the criminal justice system. Treatment of the victim should not be affected or altered in any way as a result of the victim's decision to exercise this right.

(Source: P.A. 99-413, eff. 8-20-15; 100-1087, eff. 1-1-19.)

01/10/20 12:41:46 CH

Illinois Const., Art. I, § 8.1

Statutes current through P.A. 101-309, except for portions of P.A. 101-48, 101-221, 101-238, and 101-275 of the 2019 Regular Session of the 101st General Assembly

Illinois Compiled Statutes Annotated > Constitution of the State of Illinois > Article I BILL OF RIGHTS

19 JAN -7 PM 3:17
STATE OF ILLINOIS
CLERK

Section 8.1. Crime Victims' Rights

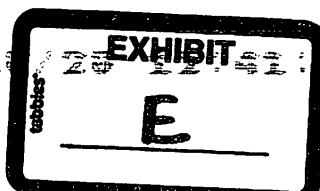
(a) Crime victims, as defined by law, shall have the following rights:

- (1) The right to be treated with fairness and respect for their dignity and privacy and to be free from harassment, intimidation, and abuse throughout the criminal justice process.
- (2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law.
- (3) The right to timely notification of court proceedings.
- (4) The right to communicate with the prosecution.
- (5) The right to be heard at any post-arraignment court proceeding in which a right of the victim is at issue and any court proceeding involving a post-arraignment release decision, plea, or sentencing.
- (6) The right to notified of the conviction, the sentence, the imprisonment, and the release of the accused.
- (7) The right to timely disposition of the case following the arrest of the accused.
- (8) The right to be reasonably protected from the accused throughout the criminal justice process.
- (9) The right to have the safety of the victim and the victim's family considered in denying or fixing the amount of bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction.
- (10) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.
- (11) The right to have present at all court proceedings, subject to the rules of evidence, an advocate and other support person of the victim's choice.
- (12) The right to restitution.

(b) The victim has standing to assert the rights enumerated in subsection (a) in any court exercising jurisdiction over the case. The court shall promptly rule on a victim's request. The victim does not have party status. The accused does not have standing to assert the rights of a victim. The court shall not appoint an attorney for the victim under this Section. Nothing in this Section shall be construed to alter the powers, duties, and responsibilities of the prosecuting attorney.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or any law enacted under this Section creates a cause of action in equity or at law for compensation, attorney's fees, or damages against the State, a political subdivision of the State, an officer, employee, or agent of the State or of any political subdivision of the State, or an officer or employee of the court.



1 STATE OF ILLINOIS)
) ss:
2 COUNTY OF W I L L)

3 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
4 WILL COUNTY, ILLINOIS

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS,)
7 Plaintiff,)
8 -vs-) No. 2018 CF 1946
9 ISMAEL GOMEZ-RAMIREZ,)
10 Defendant.)

11 Report of proceedings had in the above-entitled
12 cause before the HONORABLE EDWARD BURMILA, JR., Judge of the
13 Circuit Court of Will County, Illinois, on the 18th day of
14 December, 2019.

15 A P P E A R A N C E S :

16 MS. SARA SHUTTS,
17 Assistant State's Attorney
18 on behalf of the Plaintiff;

19 MR. DANIEL WALSH,
20 Attorney At Law
21 on behalf of the Defendant;

22 Also present: MR. JOHN WHITCOMB,
23 Attorney At Law

24 APRIL JEAN NELSON, C.S.R., R.P.R.
LICENSE NO. 084-004487
COURT REPORTER
WILL COUNTY COURTHOUSE
JOLIET, ILLINOIS 60432



1 THE COURT: This is 18 CF 1946, People versus Ismael
2 Gomez-Ramirez. Show that the defendant is here with
3 Mr. Walsh. There is a Spanish language interpreter here.
4 Counsel is here. Miss Shutts is here.

5 And I took the arguments that you made into
6 account -- and show that counsel is here on behalf of the
7 respondent, an objecting hospital -- and I went and looked at
8 the language -- of course, I'm familiar with the one in the
9 Federal Constitution and not so much with the Illinois State
10 Constitution, but both Section 8 of the Illinois State
11 Constitution and, of course, the 6th Amendment in the United
12 States Constitution say that defendants in criminal cases are
13 entitled to compulsory process. Counsel now argues on behalf
14 of the hospital that compulsory process doesn't really mean
15 that, but that there are strings attached. So what my ruling
16 in this case is going to be is I'm ordering you to produce the
17 information for an in camera inspection before I rule on
18 whether or not the hospital is entitled to the protective
19 order.

20 Now you told me the last time that you were here
21 that you were doing this at the specific direction of your
22 client. So I'm gonna give you a little bit of time to think
23 about whether you're going to produce the records or what
24 you're going to do, but I want you to bring with you the next

01/10/20 12:41:46 CH

1 time, if it's not going to be today, whoever it is that I'm
2 going to hold in contempt. Because I'm not going to hold you
3 in contempt if they refuse to turn the records over, since
4 you're doing this specifically at their direction.

5 So what we're doing right now is I'm ordering you to
6 produce the records for an in camera inspection. So how much
7 time do you need to decide whether you're going to comply with
8 that?

9 MR. WHITCOMB: I would need to contact my client.

10 THE COURT: Okay. So when do you want to come back?
11 Whenever you'd like to do that.

12 MR. WHITCOMB: I'm available January 13th.

13 THE COURT: Perfect, January the 13th.

14 Mr. Walsh?

15 MR. WALSH: Judge, is there any way my client's
16 presence could be waived that day?

17 THE COURT: Well, I don't know what's going to
18 happen, so we better have him here.

19 MR. WALSH: Okay. Any chance we can do the 15th,
20 Wednesday the 15th?

21 THE COURT: Counsel, what about your schedule?

22 MR. WHITCOMB: 15th is fine.

23 THE COURT: Miss Shutts?

24 MS. SHUTTS: That's fine, your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE COURT: All right. January the 15th.

And, Miss Shutts, draft an order.

MS. SHUTTS: Yes, your Honor.

THE COURT: Okay. Thank you both very much. All of
you, really.

(Which were all the proceedings had in this
cause this date.)

01/10/20 12:41:46 CH

1 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
2 WILL COUNTY, ILLINOIS
3
4

5 I, APRIL JEAN NELSON, a court reporter for the
6 Circuit Court of Will County, Twelfth Judicial Circuit of
7 Illinois, do hereby certify that I reported in shorthand
8 the proceedings had on the hearing in the aforementioned
9 cause; that I thereafter caused the foregoing to be
10 transcribed into typewriting, which I hereby certify to be
11 a true and accurate transcript of the proceedings had
12 before the Honorable EDWARD BURMILA, JR., Judge of said
13 Court.
14
15
16
17
18

19 APRIL J. NELSON, C.S.R., R.P.R.
20 License No. 084-004487
21
22

23 DATED this 19th day
24 of December, 2019.

01/10/20 12:41:46 CH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

APRIL JEAN NELSON, C.S.R., R.P.R.
WILL COUNTY COURTHOUSE, ROOM 462
14 WEST JEFFERSON STREET
JOLIET, ILLINOIS 60432
(815) 727-8533

INVOICE DATE: DECEMBER 19, 2018

BILL TO: MONAHAN LAW GROUP
ATTN: MONIQUE

mpatton@monahanlawllc.com

PEOPLE -VS- ISMAEL GOMEZ-RAMIREZ - NO. 2018 CF 1946

DATE TAKEN	REFERENCE	CHARGES
12-18-19	REPORT OF PROCEEDINGS -ORIGINAL/DAILY -5 pg. @ \$5.50	\$ 27.50

THANK YOU AMOUNT DUE: \$ 27.50

PLEASE MAKE CHECKS PAYABLE TO: APRIL J. NELSON

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

People
Plaintiff

vs

CASE NO: 18CF1946

Ismail Gomez Ramirez
Defendant

COURT ORDER

People present by AGA Stutts Defendant
present in person + by ~~AG~~ Dan Walsh
John W. [unclear] Counsel
Amrita Bolengrook is present. Counsel
for Amrita Bolengrook is directed to produce
the medical records for an in camera inspection.
Matter is continued to January 15, 2020 for
further proceedings. Amrita Bolengrook's
motion to quash was denied for reasons
stated in the record.

Attorney or Party, if not represented by Attorney

Name _____
ARDC # _____
Firm Name _____
Attorney for _____
Address _____
City & Zip _____
Telephone _____

Dated: 12/18/19

Entered: _____
Judge _____

ANDREA LYNN CHASTEEN, CLERK

EXHIBIT

C

COURT OF WILL COUNTY

Original - Court Copy - Plaintiff Copy - Defendant

17D Rev. 12/01/16

1 IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
2 WILL COUNTY, ILLINOIS

3 THE PEOPLE OF THE)
4 STATE OF ILLINOIS,)
5 Plaintiff,)
6 vs.) No. 2018 CF 1946
7 ISMAEL GOMEZ-RAMIREZ,)
8 Defendant.)

9
10 REPORT OF PROCEEDINGS had at the hearing of the
11 above-entitled cause, before the Honorable EDWARD ADAM
12 BURMILA JR., Judge of the Twelfth Judicial Circuit, Will
13 County, Illinois, on the 5th day of December, 2019.

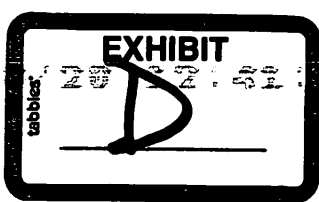
14 APPEARANCES:

15 HON. JAMES W. GLASGOW,
16 WILL COUNTY STATE'S ATTORNEY
17 BY: MS. ALEXANDRA MOLESKY
18 Appearing on behalf of the People
of the State of Illinois,

19 MR. DANIEL M. WALSH,
Appearing on behalf of the Defendant;

20 MR. JOHN WITCOMB,
21 Appearing on behalf of AMITA Health
22 Adventist Medical Center Bolingbrook.

23 FELICIA J. RACANELLI
24 Official Court Reporter
CSR No. 084-003925



1 THE COURT: Ismael Gomez-Ramirez. All right. This is
2 18 CF 1946. Show that the defendant is here. There is a
3 Spanish language interpreter present. Ms. Molesky is here.

4 MS. MOLESKY: We have a representative from
5 Bolingbrook AMITA Hospital with respect to the subpoena
6 hearing.

7 THE COURT: Okay. This is the hearing?

8 MS. MOLESKY: Yes, Judge.

9 THE COURT: I would say 20 minutes.

10 MR. WALSH: Yes, Judge. Thank you.

11 (The above-entitled cause was passed
12 and later recalled:)

13 THE COURT: Ismael Gomez-Ramierz, 18 CF 1946. Show
14 that the defendant is here with Mr. Walsh. There is a
15 Spanish language interpreter present. Show that the
16 attorney for the interpleader hospital is present.

17 And your name for the record, sir?

18 MR. WHITCOMB: John Whitcomb, W-H-I-T-C-O-M-B.

19 THE COURT: And Ms. Molesky is here.

20 Ms. Molesky, what's before the Court?

21 MS. MOLESKY: Your Honor, there is the People -- the
22 People had sent a subpoena to Bolingbrook AMITA Hospital
23 for the medical records for the named victim in this case.
24 The hospital has communicated with us that that subpoena is

1 essentially insufficient. Our motion is before you to
2 quash the subpoena which we issued, so a hearing on that
3 matter has been set.

4 THE COURT: Your position on the motion, Ms. Molesky?

5 MS. MOLESKY: First with respect to the section which
6 is cited --

7 THE COURT: Well, I'm just asking. You're objecting?

8 MS. MOLESKY: Oh, of course, Judge.

9 THE COURT: Well, counsel represents the moving party,
10 so let me hear from him first.

11 Counsel?

12 MR. WHITCOMB: Your Honor, there was a subpoena issued
13 in this matter for Evelyn Rodriguez's date of birth.

14 THE COURT: If you can just go a little slower, it has
15 to be interpreted. I'm not being critical, I just didn't
16 know if you knew that was happening.

17 MR. WHITCOMB: From the State's Attorney for Evelyn
18 Rodriguez's date of birth, 11-15-87, from the date of her
19 hospitalization on October 6th, 2018, to the date of
20 discharge. A response was sent to the State's Attorney by
21 the hospital saying that it did not have the proper
22 documentation to obtain those medical records. The
23 subpoena reveals on its face that it falls within the scope
24 of a privileged -- physician/patient privilege. That the

1 Court is not to look further into the face of the request
2 itself.

3 The physician/patient privilege is codified in
4 Section 802 of the Code of Civil Procedure, although it
5 specifically has allegations that apply to criminal law as
6 well, and that is Section 735 ILCS 5/8-802. It states
7 specifically that no physician or surgeon shall be
8 permitted to disclose any information he or she may have
9 acquired in attending any patient in a professional
10 character necessary to enable him or her to professionally
11 serve the patient. There's exceptions under that. The
12 only exception that I believe applies to this situation is
13 section three, which says with the expressed consent of the
14 patient that those records may be allowed to be permitted
15 by subpoena.

16 In a domestic battery situation they actually
17 mention it in Section 8-802 at the end of the statute,
18 which it states that it's allowable with a HIPAA protective
19 order but only in case of grand jury summons and not for a
20 regular summons from the State's Attorney. So we can see
21 from that specific statement in the act itself that the
22 legislature considered cases such as this one whether it
23 was relevant and decided that only in certain circumstances
24 before a grand jury that it would be permitted. We are

1 more than willing to give over those records to the Court
2 if there's a circumstance in which Ms. Rodriguez comes in
3 and signs a authorization for those to be released.

4 Now, it is my belief that from my review of the
5 records that Ms. Rodriguez was never notified that her
6 records were at issue. Under the Crime Victims Act and the
7 Constitution of the State of Illinois the right to notice
8 and a hearing before a court ruling on the request for
9 access to any of the victim's records for information or
10 communications are privileged or confidential by law.

11 THE COURT: Let me ask you a question. What records
12 of the State's Attorney's Office do you have to
13 substantiate that statement? You said that they failed in
14 their duty under the constitution. How do you know that?
15 I mean, you don't know what the internal records -- they
16 may have called her on the phone every day. You just said
17 to me that you've reviewed it and there was no notice
18 given, but you don't know that.

19 MR. WHITCOMB: Judge, I asked Ms. Molesky whether she
20 had been informed of the subpoena, she told me that they
21 had not informed her. I looked at the case record that --

22 THE COURT: You're taking -- you're saying that you
23 have an admission from the State's Attorney's Office that
24 they didn't?

1 MR. WHITCOMB: They didn't notify her that they were
2 putting her records at issue.

3 THE COURT: Okay. Go ahead.

4 MR. WHITCOMB: So the reason the motion says on
5 information and belief is that I have no personal knowledge
6 of that but I have heard from them regarding that. So --

7 THE COURT: Well, I'm only saying you were making a
8 statement of fact and I just want to make sure that the
9 record is clear as to where that information came from, but
10 you've cleared it up now.

11 Go ahead, finish what you're going to say. I
12 didn't mean to interrupt you.

13 MR. WHITCOMB: So we believe that we have two grounds
14 to not produce those records on the subpoena of the State's
15 Attorney. The first ground would be that it's privileged
16 information under the Physician/Patient Act.

17 The second one would be that procedurally they
18 are incorrect that there was not a notice at hearing to
19 determine whether she could come in and object to those
20 records being pursued by the State's Attorney, and that was
21 not done as far as I can tell. And from the notice that
22 was received it was actually not on a scheduled court date
23 before this Court.

24 THE COURT: Okay. A couple of questions that I have

1 for you before we let Ms. Molesky respond. And it's
2 completely anecdotal, it isn't controlling in any sense,
3 but this Court receives voluminous records from medical
4 facilities exactly of the same type that you are objecting
5 to turning over; and this is the first time that anybody
6 has ever come forward and stood on the grounds that you are
7 standing on to prevent the production of that information.

8 Do you believe that you have discovered some new
9 application of the law or you're just saying that all those
10 other hospitals and their attorneys and legal departments
11 and that stuff are just lax, that they violate the law
12 repeatedly and produce the information, give it to me to
13 review in camera without these requests? When I say
14 hundreds, I mean that literally. I'm not exaggerating.
15 I've got two more right here today without any of the
16 parties taking the stance that you are.

17 So do you think that your brother and sister
18 attorneys that represent these other medical facilities are
19 committing malpractice, that they let their clients be
20 taken advantage of by the State's Attorney and just turn
21 these records over? And this literally -- I have been here
22 on this court call for four years and this is the first
23 time that anybody has brought this up. Again, it's
24 completely anecdotal. You may have hit on the Rosetta

1 Stone as far as these revelations are --

2 MR. WHITCOMB: I'll answer that three different ways.

3 THE COURT: Go ahead.

4 MR. WHITCOMB: The first is I've represented the very
5 argument that I have before many courts --

6 THE COURT: Okay.

7 MR. WHITCOMB: -- because we represent hospitals, we
8 represent social workers, we represent physicians, we
9 represent psychiatrists when they're subpoenaed records.
10 We have made this argument many times regarding this. So
11 in terms of what I have done and made the argument, we have
12 made this argument many times before both civil and
13 criminal courts.

14 The case law that I provided to you, and I have
15 copies of other cases, talk about cases that are replete of
16 criminal cases in which they seek the victim's records or
17 the defendant's records in that case where they make the
18 patient/physician privilege. It's well-established law.
19 Whether they're doing it in this court or not, I have no
20 idea. Whether another attorney is committing malpractice
21 or making a judgment that they're not going to come in and
22 make that argument before this Court, I can't answer for
23 that but my client asked me to make this argument before
24 you because they believe that the patient privilege applies

1 and they believe under the witness and the US Constitution
2 that they were to required to have her noticed, which she
3 could come in here and agree to those records.

4 THE COURT: Well, you mean the state constitution?

5 MR. WHITCOMB: The state constitution, yes.

6 THE COURT: Let me ask you a different question now
7 that you have interjected the Constitution. There's a
8 gravamen of what I was wrestling with over this issue.
9 Frequently, and especially in the emergency room, the
10 victims make statements about the incident that have
11 nothing to do really with their medical treatment, okay.

12 Here is a hypothetical for you. The victim tells
13 the doctor in the emergency room this did not happen, I
14 made it all up. I'm mad at my husband, I made it up. I
15 fell down the stairs, it didn't happen. Are you telling me
16 that the defendant's federal constitutional right to be
17 confronted with his witnesses against him would be trumped
18 by your argument that they could not turn over that
19 completely exculpatory information unless the victim agreed
20 and the hospital got its protective order?

21 Here is the key to the whole thing. The
22 defendant is innocent and he would never know that because
23 the victim says oh, wait a minute, I still want to punish
24 him. This is completely hypothetical. I'm not accusing

1 anybody of doing this.

2 MR. WHITCOMB: Right.

3 THE COURT: And I know that I told the doctor that so
4 I'm not going to let Mr. Walsh ever see that I told the
5 doctor that. I'm not going to let him know, I won't agree.
6 And then you come in here and say well, the hospital isn't
7 going to agree either. So the defendant is deprived of
8 exculpatory information which Ms. Molesky has a duty to not
9 only ferret out but turn over, okay. And because of you --
10 and I don't mean you personally.

11 MR. WHITCOMB: I understand, Your Honor.

12 THE COURT: I'm not taking anything out on you,
13 counsel, I'm just using that in a generic sense.

14 And the victim can say well, I'm going to prevent
15 Mr. Walsh from ever finding out that there is absolute
16 evidence of my client's innocence and prevent that from
17 happening, and he's going to go ahead and get convicted and
18 go to the penitentiary and no one will ever know that that
19 statement was made. And so your argument is -- and it may
20 very well be. I'm not criticizing you, I just want to make
21 sure that the record is clear. You're saying that his
22 federal constitutional right to confront the witnesses
23 against him is blunted by the argument that you have made
24 here today?

1 MR. WHITCOMB: I would characterize the Sixth
2 Amendment confrontation clause, which is what Your Honor is
3 essentially asking me, is not blunted by that. But the
4 State's Attorney's duty to turn over records under the
5 Brady principal is not at issue here because she doesn't --

6 THE COURT: Well, it is because he'll never know. If
7 you're telling me that the victim can say I'm not going
8 along with this and that you can come in here on behalf of
9 the hospital and say we're not going along with it either,
10 you're doing exactly that because she will never know. No
11 one will ever -- you're telling me that I can't even look
12 at the records. That if I don't issue a specific order
13 that even I can't look at the records. So no one ever
14 would ever know.

15 MR. WHITCOMB: So I would walk through that the
16 federal case law that you have talked about actually deals
17 with --

18 THE COURT: I didn't mention any federal cases. This
19 is a hypothetical question.

20 MR. WHITCOMB: So my argument would be under the
21 constitution under the Sixth Amendment there are case law
22 that talk about the duty to confront somebody at trial. It
23 doesn't talk about pretrial discovery. And in fact those
24 cases specifically --

1 THE COURT: Now, hold on, counsel, let's not split
2 hairs here. He can't do his job if he doesn't have the
3 information, so it goes completely part and parcel. That's
4 why we got away from the specific discovery procedures of
5 Ritz and put the discovery statute into effect, so we could
6 get away from the argument that you are making. That's
7 where discovery exists.

8 MR. WHITCOMB: So Illinois has adopted per the People
9 versus Bean and People versus Foggy case that the defendant
10 can request records that they reasonably believe would have
11 evidence that would benefit their complaint. But in this
12 case the State's Attorney didn't. They have -- they have
13 no reason to believe that evidence exists to exonerate.
14 They have presented nothing before them saying that there's
15 going to be evidence that they would have to turn over that
16 they know of.

17 THE COURT: I'm not talking about instances where they
18 know about it.

19 MR. WHITCOMB: Okay.

20 THE COURT: I'm talking about an instance where they
21 don't know about it. Nobody knows about it except you and
22 the victim.

23 MR. WHITCOMB: And I believe that the privilege trumps
24 in those circumstances if the request comes from the

1 State's Attorney.

2 THE COURT: Okay, sir.

3 Ms. Molesky?

4 MS. MOLESKY: First with respect to that argument.
5 The Illinois Constitution, and I will state for the record
6 the victim is well aware in this case that her medical
7 records are at issue, but that is not what is controlling
8 here. I did not say that to counsel. What I said was it
9 doesn't -- as a matter of practice we are not required
10 under the Illinois Constitution to notify the victim of a
11 subpoena which is sent out for her medical records. What I
12 did also, and I will acknowledge I said to counsel, we
13 didn't send a copy of the subpoena to the victim in this
14 matter. We don't do that.

15 But pursuant to 725 ILCS 120/4.5,
16 subsection (c-5)(9) discusses the right to notice in
17 hearing before disclosure of confidential or privileged
18 information or records. That actually hits exactly on what
19 counsel is now suggesting should be done, which is when the
20 defense is seeking the medical records of the victim. At
21 that point then the victim has the right to be notified and
22 a right to a hearing if the victim objects. So that
23 argument that's being advanced is actually thwarted by the
24 very statute that's being cited to say that these records

1 are something that we are now somehow in violation of the
2 Illinois Constitution. So that's incorrect.

3 It is our position that a subpoena is a court
4 order. And to take language from Lisowski versus MacNeal
5 Memorial at 381 Ill. App. 3rd, 275, pinpointing 285,
6 indicates that any witness shall respond to any lawful
7 subpoena of which he or she has actual knowledge. And it
8 goes on to say that a subpoena is an order of the court, it
9 is not an overture by a party.

10 In this case the subpoenas which are issued on
11 behalf of the People are a court order as is evidenced
12 anecdotally by the very fact that medical records which are
13 subpoenaed by the State's Attorney's Office, who have a
14 duty to everybody in the State of Illinois, including
15 criminal defendants, to determine whether or not there's
16 potentially exculpatory information and that their due
17 process rights are upheld. That these medical records
18 which may contain information which are exculpatory to the
19 defendant are obtained. And they are turned over routinely
20 to the court for an in camera inspection to determine
21 whether or not there's any relevant information. And
22 assuming that there is relevant information, whether it's
23 inculpatory or exculpatory, those records are then turned
24 over to the attorneys. And the discovery rules also

1 discuss what is to be done with those records.

2 And as counsel indicated within the statute which
3 governs, at least the doctor/patient privilege, the
4 legislature does certainly recognize that there are
5 domestic battery cases and aggravated domestic battery
6 cases. But to say that essentially for those cases the
7 only ones that the victim doesn't sign off would be a grand
8 jury subpoena ignores any kind of misdemeanor domestic
9 battery cases which could potentially come up, ignores any
10 cases where the People are seeking to charge by way of an
11 information or any other instance wherein the grand jury
12 would be utilized.

13 THE COURT: Ms. Molesky, first of all, counsel has
14 every right to contest the subpoenas.

15 MS. MOLESKY: Yes, Judge.

16 THE COURT: The fact that it's issued and it is a
17 court order is an ipso facto thing. And there have been
18 occasions where you have filed or subpoenaed materials, and
19 this is not a rubber stamp procedure that I have denied and
20 not turned over the records; is that correct?

21 MS. MOLESKY: Correct.

22 THE COURT: But at the same time the opportunities for
23 the State to return to the grand jury post-indictment are
24 almost nonexistent.

1 MS. MOLESKY: We are unable to do so at that point.

2 THE COURT: You wouldn't be able to turn around
3 tomorrow and now go back to the grand jury and say now we
4 want you to issue a subpoena because the hospital is
5 balking at turning it over.

6 MS. MOLESKY: We'd be unable to do that. The case has
7 already been charged.

8 THE COURT: So the only procedure you'd be able to use
9 is the court and not the grand jury post-indictment.

10 MS. MOLESKY: Correct, Judge.

11 THE COURT: Okay. Go ahead.

12 MS. MOLESKY: And so often times we become aware of
13 medical records which are in existence after we have
14 received discovery or any other reports from either law
15 enforcement agencies or in subsequent conversations even,
16 sometimes even with defense counsel. And so, again, we are
17 under an obligation to attempt to obtain those records.
18 And my response is directed just at counsel's argument that
19 the subpoena lacks proper documentation. And so that is
20 what our position is that the subpoena is in and of itself
21 a court order which is subject to protections by the court,
22 as are DCFS records or other records which we subpoena
23 which go to the judge who is presiding over the matter to
24 review and to determine whether or not those records

1 contain relevant information which should be disclosed to
2 the party. This is not some kind of fishing expedition.

3 In addition, Judge, federal law under the HIPAA
4 protections also recognizes that in cases where there is
5 potential, at least in this courtroom with respect to
6 domestic violence cases, that protected records can be
7 disseminated and disclosed to the court by law enforcement
8 agencies. And the People of the State of Illinois through
9 the State's Attorney's Office are one arm of law
10 enforcement and these investigatory procedures, as Your
11 Honor indicated, cannot return to the grand jury once a
12 case has been charged to be able to obtain these to comply
13 with the minimum of the 13 exceptions which are set forth
14 that counsel indicates in the motion.

15 Finally with respect to the civil procedure and
16 criminal procedure interacting together, there have been
17 interactions where the civil procedure which may govern,
18 and that I believe is People versus Sutton, which is cited
19 in counsel's motion, even there in the interplay between
20 the Code of Civil Procedure and certain protections under
21 the Criminal Procedure Code, the Criminal Procedure Code
22 has actually governed. And so the doctor/patient privilege
23 is not an absolute privilege. Certainly there are certain
24 limitations to it, which is discussed in those cases by the

1 reviewing courts. And the defendant's due process rights
2 and by virtue of that due process right our obligation as
3 the prosecuting attorneys would certainly be something that
4 the doctor/patient privilege in limited instances would
5 yield to the right to confrontation, and again, due
6 process. And so based upon that we are asking that the
7 Court order that the subpoena be enforced and that these
8 medical records be turned over.

9 THE COURT: Before I let counsel respond, anything
10 that you want to say, Mr. Walsh?

11 MR. WALSH: Judge, only that the reports and the
12 victim's petition for order of protection indicate that she
13 was drinking that evening, so her BAC could be in those
14 medical records that could be Brady material.

15 THE COURT: Counsel, any response that you want to
16 make?

17 MR. WHITCOMB: The Constitution of the State of
18 Illinois specifically gives the right to notice and hearing
19 before this Court before issuing the subpoena, before
20 issuing the subpoena. She acknowledged what she said to me
21 was that she was not given notice of the subpoena when it
22 was issued. The opportunity is for her to come in here and
23 assert her rights of what she is --

24 THE COURT: But you don't represent her.

1 MR. WHITCOMB: I don't represent her and that's why
2 we're standing in her stead saying we don't know what she
3 wants because we don't have a -- she was not notified. She
4 did not appear at a hearing. If she came in and said I
5 agree to have those records released, we would do so
6 instantly. So the issue here is that we're standing in her
7 stead because she did not get notice and a hearing and an
8 opportunity to be heard.

9 I believe that Ms. Molesky's argument regarding
10 the physician/patient privilege would make that -- the
11 entire statute nullified. Her argument is basically if --
12 she has an obligation to turn over everything under that
13 statute. The cases are replete of criminal cases where
14 they've withheld those records from that because they fall
15 within the privilege.

16 THE COURT: Well, I don't think that was what
17 Ms. Molesky's argument was. I mean, she can certainly
18 speak for herself. She's talking about turning over what's
19 relevant. I don't think that she's talking about just
20 getting a thousand pages of medical records and just
21 turning them over. And that belies the court's review of
22 the materials beforehand.

23 I mean, there have been instances where I've
24 gotten a thousand pages of medical records, and some people

1 think I don't read them but I do, and I've turned over one
2 page out of it. In fact, I just did that in a case with
3 Mr. Bretz not too long ago of hundreds of pages of medical
4 records because I felt that that one particular -- again,
5 completely anecdotal, was exculpatory and turned it over.

6 But are you in this building on a regular basis,
7 counsel?

8 MR. WHITCOMB: I am, Your Honor.

9 THE COURT: Okay. What day next week are you back?

10 MR. WHITCOMB: I'm actually here next Thursday.

11 THE COURT: Well, I'm not going to be here. My wife
12 has a medical procedure on the 12th and I'm not going to be
13 here. So another day next week?

14 MR. WHITCOMB: I can give you dates that I could
15 appear next week.

16 THE COURT: I'm also not going to be here on the 19th
17 for that same purpose. Let's see when you're available.

18 MR. WHITCOMB: So next week I'm available on Monday,
19 I'm available on Wednesday.

20 THE COURT: Mr. Walsh, your schedule, are you
21 available on the 11th?

22 MR. WALSH: Yes, I am, Judge.

23 THE COURT: Okay. 9:00 o'clock on the 11th. I'll
24 have the file, Rosie.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Thank you all very much.

MR. WHITCOMB: Thank you, Your Honor.

(Which were all the proceedings had.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

I, FELICIA J. RACANELLI, Official Court Reporter
for the Circuit Court of Will County, Twelfth Judicial
Circuit of Illinois, do hereby certify that I reported in
shorthand the proceedings in the above-entitled cause; that
I thereafter caused the foregoing to be transcribed into
typewriting, which I hereby certify to be a true and
accurate transcript of the proceedings had before the
Honorable EDWARD ADAM BURMILA JR., Judge of said Court.

Dated at Joliet, Will County, Illinois, this 5th
day of December, 2019.

Felicia J. Racanelli
Official Court Reporter
CSR No. 084-003925

FELICIA J. RACANELLI, CSR
WILL COUNTY COURTHOUSE, ROOM 333
14 WEST JEFFERSON STREET
JOLIET, ILLINOIS 60432
(815) 724-1342

INVOICE DATE: December 6, 2019

BILL TO: MONAHAN LAW GROUP, LLC
(312) 419-0252

ATTENTION: MONIQUE

PEOPLE VS. ISMAEL GOMEZ-RAMIREZ - 2018 CF 1946

DATE TAKEN	REFERENCE	CHARGES
12-5-19	TRANSCRIPT OF PROCEEDINGS - DAILY COPY (121 pg. @ \$5.50)	\$121.00

Transcript ordered by Monique on 12-5-19, delivered 12-6-19.

BALANCE DUE \$121.00

Please make checks payable to: FELICIA J. RACANELLI
Thank you.

01/10/20 12:41:46 CH

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)
 Plaintiff,)
) NO. 18 CF 1946
 vs.)

Ismael Gomez-Ramirez,
 Defendant.

2020 JAN 24 PM 3:13
FILED

**RESPONSE TO MOTION TO FOR RECONSIDERATION OR IN THE
ALTERNATIVE, FOR ENTRY OF FRIENDLY CIVIL CONTEMPT**

Now comes the People of the State of Illinois by JAMES W. GLASGOW, State's Attorney of Will County, Illinois, through his Assistant, ALEXANDRA MOLESKY and respectfully prays this Court deny Defendant's Motion for Reconsideration or in the Alternative, for Entry of Friendly Civil Contempt in the above captioned cause and hereby state as follows:

1. AMITA Health, by and through its attorneys, claims the constitutional and statutory protections pertaining to Ms. Rodriguez's health records trump Defendant's rights under the Sixth Amendment. (Respondent's Motion, p. 3, par. 5) In support of its Motion, AMITA Health cites People v Foggy, 121 Ill.2d 337 (Ill. 1988); however, this case is inapposite to the case at bar. The Illinois Supreme Court in Foggy addressed a very narrow issue: the constitutionality of the *absolute and unqualified* privilege afforded to communications between a victim of sexual assault and her ripe crisis counselor codified under 735 ILCS 5/8-802.1. Ill. 2d at 347-8. There is no such absolute or unqualified privilege under 735 ILCS 5/8-801 for the records requested here as was the case for the

communications addressed in Foggy. Notwithstanding the absolute privilege afforded by this statute, the Illinois Supreme Court in Foggy considered a number of factors it before determining it would not require the privilege to be breached “in this case;” thereby suggesting that under different circumstances even an unqualified privilege may yield to a defendant’s due process and confrontation rights. Id. At 349-50.

2. Similarly AMITA Health, by and through its attorneys, relies on People v Bean, 137 Ill.2d 65 (Ill.1990) in support of its argument that Defendant’s confrontation and due process rights do not permit disclosure of Ms. Rodriguez’s records in this case. Bean is inapplicable insofar as the case addressed a witness’ privileged mental health records, which is unlike the hospital treatment records at issue in this case. In addition, the defendant in Bean was granted access to a portion of these privileged records but complained that his confrontation rights were violated because he had been denied unfettered access to the entirety of the witness’ records: a claim the trial court and Illinois Supreme Court properly rejected. Id. The Court’s analysis is helpful in this case, as it relied heavily on the United States Supreme Court’s decision in Pennsylvania v Ritchie, 480 U.S. 39, 107 S.Ct. 989 (1987) which determined it was appropriate for a trial court to conduct an *in camera* inspection of privileged records, as it protects both a defendant’s due process right to a fair trial as well as the witness’ statutory right to preserve the confidentiality of certain records. Bean, 137 Ill.2d at 99-100. In Ritchie, Bean, and in this case, the parties have specified which records it seeks and their relevancy to the adjudication of the case. The public interest in a fair adjudication of this matter and Defendant’s due process and confrontation rights outweigh the privileged nature of the

records to the extent that they should be delivered to this Court for an *in camera* inspection, at which time this Court can determine which, if any, portions are relevant and should be disclosed to the parties. *See Id.*

3. AMITA Health, by and through its attorneys, also claims the Will County State's Attorney's Office has violated Article I, sec. 8.1(a)(2) and the Illinois Constitution and Rights of Crime Victims and Witnesses Act, by not sending notice of the subpoena issued for her medical records. The Illinois Constitution and 725 ILCS 120/4(a)(1.5) provides victims with "[t]he right to notice and to a hearing before a court ruling on a request for access to any of the victim's records, information, or communications which are privileged or confidential by law." However, a closer reading at the plain language of the entire statute shows that this notice requirement only applies when those records, information, or communications are requested by a defendant. 725 ILCS 120/4.5 is entitled "Procedures to implement the rights of crime victims." Subsection 9 specifically addresses the "Right to notice and hearing before disclosure of confidential or privileged information or records:"

A defendant who seeks to subpoena records of or concerning the victim that are confidential or privileged by law must seek permission of the court before the subpoena is issued. The defendant must file a written motion and an offer of proof regarding the relevance, admissibility and materiality of the records. If the court finds by a preponderance of the evidence that: (A) the records are not protected by an absolute privilege and (B) the records contain relevant, admissible, and material evidence that is not available through other witnesses or evidence, the court shall issue a subpoena requiring a sealed copy of the records be delivered to the court to be reviewed *in camera*. If, after conducting an *in camera* review of the records, the court determines that due process requires disclosure of any portion of the records, the court shall provide copies of what it intends to disclose to the prosecuting attorney and the victim. The prosecuting attorney and the victim shall have 30 days to seek appellate review before the records are disclosed to the defendant. The disclosure of copies of any portion of the records to the prosecuting attorney does not make the records subject to discovery.

The Will County State’s Attorney’s Office complied with the constitutional and statutory provisions as it pertains to Evelyn Rodriguez’s hospital treatment records. As a result, this Court properly denied the motion to quash subpoena by AMITA Health. This Honorable Court should deny the Motion to Reconsider and the subpoenaed records should be turned over to the Court for an *in camera* inspection.

5. AMITA Health, by and through its attorneys, argues this Court should reconsider its ruling ordering the production of Evelyn Rodriguez’s medical records for *in camera* inspection essentially claiming the State cannot protect a Defendant’s Sixth Amendment Rights due to a lack of “standing.” (Respondent’s Motion, p. 3, par. 4) Unlike an attorney for a private litigant, the Office of the State’s Attorney is unique in its duty “to seek justice, not merely convict.” ILCS S. Ct. R. of Professional Responsibility 3.8.

Indeed, “[t]he State’s Attorney in his official capacity is the representative of all the people, including the defendant, and it was as much his duty to safeguard the constitutional rights of the defendant as those of any other citizen.” People v. Cochran, 313 Ill. 508 526 (1924). Furthermore, these obligations are solidified as relating to information sought by the State by their duties under Brady v. Maryland 373 U.S. 83 to “turn over to the defense upon request any evidence that is favorable to the accused and a failure to do results in a denial of due process”, People v. Coleman 206 Ill.2d 261 (2002) 261.

6. The People take no position with regard to defense’s request for “Friendly Civil Contempt” as described in AMITA Health’s filing’s and leave it to the Court’s discretion to administer contempt as remedy in this matter as it sees fit.

JAMES W. GLASGOW
State’s Attorney
Will County, Illinois

Alexandra Molesky
Assistant State’s Attorney

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

AFFIDAVIT

Alexandra Molesky, Assistant State's Attorney, being first duly sworn on oath, deposes and says that she has read the foregoing and knows the contents thereof, and that the same is true to the best of her knowledge.

Alexandra Molesky
Assistant State's Attorney



Subscribed and sworn to before me
this 24th day of January , 2020

NOTARY PUBLIC



STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff)
v.)
ISMAEL GOMEZ-RAMIREZ)
Defendant)

No. 2018 CF 1946

FILED
2020 FEB - 7 P 1:50
CIRCUIT COURT
WILL COUNTY ILLINOIS

**AMITA HEALTH'S REPLY IN SUPPORT OF ITS MOTION FOR
RECONSIDERATION OR, IN THE ALTERNATIVE,
FOR ENTRY OF FRIENDLY CIVIL CONTEMPT**

NOW COMES AMITA Health, by and through counsel, Monahan Law Group, LLC, and presents this Reply in Support of Motion for Reconsideration or, in the Alternative, for Entry of Friendly Civil Contempt ("Motion for Reconsideration"), and respectfully states as follows:

I. INTRODUCTION

The State has attempted to rely on the defendant's Sixth Amendment right of compulsory process to justify overriding the physician-patient privilege pertaining to the subpoenaed documents, arguing that the State has standing to assert the defendant's rights and that its *Brady* obligations entitle it to obtain those documents. As explained in Section II, below, far from supporting the State's standing argument, the single, nearly 100-year old case cited by the State reverses a conviction due to the State's violation of the defendant's Fifth Amendment rights, rather than involving any attempt by the State to protect the defendant's rights by invoking them as a basis for seeking information from a third party. Moreover, the State's *Brady* argument is refuted by established case law holding that the State's *Brady* obligations are limited to producing exculpatory evidence in its possession, and do not create any duty, much less the power, to obtain

privileged documents from a third party. In any event, even if the State has standing to invoke the defendant's Sixth Amendment rights, the State is unable to distinguish controlling case law indicating that those rights do not supersede the physician-patient privilege applicable to the subpoenaed documents.

The State has attempted to justify its refusal to provide the crime victim with notice of the State's subpoena of her hospitalization records by arguing that the Rights of Crime Victims and Witnesses Act (the "Act") does not apply to subpoenas issued by the State. As explained in Section III, below, there are two flaws in this argument: (1) it ignores the Constitution, which does not distinguish among the State, criminal defendants, or civil litigants in requiring notice to crime victims of subpoenas of their privileged or confidential records (Ill. Const. art. I, § 8.1(a)(2)); and (2) it relies on a provision in the Act that applies to subpoenas by criminal defendants (725 ILCS 120/4.5(c-5)(9)), but ignores another provision in the Act that also applies to subpoenas issued by the State (725 ILCS 120/4(a)(1.5)).

Finally, the State expressly declines to take any position with respect to AMITA's request, in the alternative to reconsideration, for entry of friendly civil contempt. By disputing that the Act applies to its subpoenas, the State's Attorney's Office has essentially doubled down on its acknowledgement that it has a policy against providing notice to crime victims of subpoenas of their medical records. Consequently, there is more reason than ever, if the Court declines to reconsider its denial of the motion to quash, that the important, recurring constitutional and statutory issues raised by this proceeding receive appellate review in accordance with the friendly contempt protocol utilized in our State.

II. THE STATE'S SUBPOENA OF THE CRIME VICTIM'S PRIVILEGED MEDICAL RECORDS IN NOT SUPPORTED BY EITHER THE DEFENDANT'S CONSTITUTIONAL RIGHTS OR THE *BRADY* DOCTRINE.

1. In its Motion for Reconsideration, AMITA Health noted, with respect to the Court's reliance on defendants' constitutional rights to compulsory process as a basis for overriding the physician-patient privilege applicable to the subpoenaed documents, that "[n]o authority has been cited, and it appears that none exists, suggesting that the State has standing to invoke a defendant's Sixth Amendment rights." See AMITA's Motion for Reconsideration (the "Motion"), ¶ 4. AMITA also asserted that "the State sought the records in hopes of bolstering its case against the defendant, not to attempt to assist the defendant." *Id.*

2. This Court denied the motion to quash, finding that "both Section 8 of the Illinois State Constitution and . . . the 6th Amendment in the United States Constitution say that defendants in criminal cases are entitled to compulsory process." See Transcript of December 18, 2019 Hearing attached as **Exhibit B** to AMITA's Motion. The Sixth Amendment of the Constitution is for the "accused," not for the State to bolster its case. The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

USCS Const. Amend. 6. See also Illinois Const., Art. I, § 8.

3. In its response to the Motion for Reconsideration, the State does not dispute that it subpoenaed the crime victim's hospitalization records to try to bolster its case against the defendant. It nevertheless argues that it has the "duty to safeguard the constitutional rights of the defendant as those of any other citizen." State's Response to Motion for Reconsideration (the "Response"), ¶ 5. The single case that the State cited for this proposition, *People v. Cochran*, 313

Ill. 508, 526 (1924), did not hold that the State has standing to assert a defendant's constitutional rights. Rather, *Cochran* held that the State had violated a defendant's Fifth Amendment rights by tricking him into confessing to a murder. Because neither *Cochran* nor any other case holds that the State has standing to assert a defendant's constitutional rights, as a basis for seeking privileged documents or for any other reason, the State cannot rely on the defendant's constitutional rights as a basis for subpoenaing the crime victim's privileged medical records.

4. The State also relies on the *Brady* doctrine as a basis for its putative obligation to seek the subpoenaed documents. See Response, ¶ 5 (citing *Brady v. Maryland*, 373 U.S. 83 (1963), and *People v. Coleman*, 313 Ill.2d 261(2002)). However, while the *Brady* doctrine requires the State to disclose exculpatory information to the defendant, it “does not require the government to gather information or conduct an investigation on the defendant's behalf.” *United States v. Tadros*, 310 F.3d 999, 1005 (7th Cir. 2002). Accord, *United States v. Senn*, 129 F.3d 886, 893 (7th Cir. 1997)(“*Brady* prohibits suppression of evidence, it does not require the government to act as a private investigator and valet for the defendant, gathering evidence and delivering it to opposing counsel.”).

5. In short, the subpoena at issue should be recognized for what it is: an attempt by the State to develop evidence against the defendant. But even if the subpoena were motivated by the desire to assist the defendant, the State could not rely on either the defendant's constitutional rights or the *Brady* doctrine in order to supersede the crime victim's privilege to maintain the confidentiality of her hospitalization records.

III. EVEN IF THE DEFENDANT HAD SERVED THE SUBPOENA, HIS CONSTITUTIONAL RIGHTS WOULD NOT SUPERSEDE THE CRIME VICTIM'S RIGHTS TO NOTICE, AN OPPORTUNITY TO BE HEARD, AND TO MAINTAIN THE CONFIDENTIALITY OF HER MEDICAL RECORDS.

6. The State seeks to step into the shoes of the Defendant because the State is barred from seeking the victim's medical records under the "physician-patient privilege." 735 ILCS 5/8-802 (not 735 ILCS 5/8-801, i.e., Marital Privilege, as argued by the State in ¶ 1 of State's Response.)

7. The defendant's constitutional rights would not supersede the crime victim's constitutional and statutory rights to notice and an opportunity to be heard with respect to the subpoenaed documents, and her statutory right to maintain the confidentiality of her privileged medical records, even if the defendant's constitutional rights were implicated by the subpoena. In its Motion, AMITA demonstrated that the subpoena does not satisfy the narrow circumstances in which Illinois courts have determined that a defendant's constitutional rights require production of otherwise confidential information. Motion, ¶ 4, citing *People v. Foggy*, 121 Ill.2d 337 (1988), and *People v. Bean*, 137 Ill.2d 65 (1990).

8. In response, the State argued that *Foggy* is distinguishable because the communications with a rape counselor involved in that case are absolutely privileged. Response, ¶ 1. This argument ignores the fact that the crime victim has an absolute, unqualified right to notice and an opportunity to be heard before her privileged medical records were subpoenaed. See Ill. Const. art. I, § 8.4(a)(2); 725 ILCS 120/4(a)(1.5). Moreover, *Foggy* held that for a defendant's constitutional rights to supersede a privilege, the defendant must allege specific information being sought in the requested records that would justify abrogating the privilege. *Foggy*, 121 Ill.2d at 349. (See also *State v. Hicks*, 2011 Del.C.P. Lexis 96, *7). Here, on the other hand, the State

failed to specify what information was sought in the privileged medical records that would allegedly justify abrogating the crime victim's constitutional and statutory rights.

9. Similarly, *People v. Bean*, 137 Ill.2d 65 (1990), addressed competing interests of the *defendant's* specific requests for information invoking the Sixth Amendment protections against the statutory privilege of the victim. The same is true for *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987), a case relied on by the State that involved whether a defendant charged with molesting his daughter was entitled to pretrial discovery of her records from a state protective service agency. *Id.* at 42-43.

10. There are no such competing interests where, as here, the State subpoenas records. This is illustrated by *People v. Kucharski*, 346 Ill.App.3d 655 (2d Dist. 2004), which held that the trial court erred by allowing medical personnel to testify regarding information they obtained in treating a defendant who had drug-filled balloons in his digestive tract. As in this case, the information in question fell within the scope of the physician-patient privilege and no exception applied.

11. Under these circumstances, even if the State had standing to assert the defendant's constitutional rights, it has failed to make the showing required to supersede the crime victim's constitutional and statutory rights.

IV. THE CONSTITUTIONAL AND STATUTORY PROTECTIONS OF CRIME VICTIMS APPLY TO SUBPOENAS ISSUED BY THE STATE.

12. In its Response, the State argues that it is not subject to the protections afforded crime victims by the Illinois Constitution and the Rights of Crime Victims and Witnesses Act. Response, ¶ 3. It cites a single provision of the Act that addresses subpoenas by defendants,

(725 ILCS 120/4.5(c-5)(9)), but ignores another provision in the Act that also applies to subpoenas issued by the State:

“(a) Crime victims shall have the following rights:

* * *

(1.5) The right to notice and to a hearing before a court ruling on a request for access to any of the victim’s records, information, or communications which are privileged or confidential by law.” 725 ILCS 120/4(a)(1.5).

13. Similarly, the victim rights provision in the Illinois Constitution also apply to subpoenas served by the State:

“(a) Crime victims, as defined by law, shall have the following rights:

* * *

(2) The right to notice and to a hearing before a court ruling on a request for access to any of the victim’s records, information, or communications which are privileged or confidential by law.” Ill. Const. art. I, § 8.1(a)(2).

14. The applicability to the State of the constitutional and statutory provisions protecting crime victims from disclosure of their privileged and confidential communications is beyond cavil. Regardless whether those materials are ultimately produced, there is no justification for denying a crime victim the notice and opportunity to be heard that is required by law.

V. CONCLUSION

15. The flimsiness of the State’s Response to AMITA’s Motion for Reconsideration demonstrates that the Court erred in concluding that the State’s subpoena should be enforced. The extreme positions taken by the State, including its insistence that it is not subject to the constitutional and statutory protections afforded crime victims, should be rejected by this Court. At a minimum, the Court should hold AMITA in friendly civil contempt so that these important issues can be addressed by the courts of review.

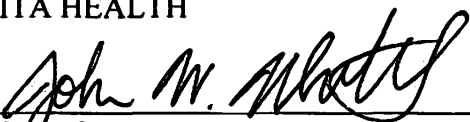
WHEREFORE, AMITA Health respectfully requests that this Honorable Court enter an order:

1. Reconsidering and granting AMITA Health’s motion to quash; or
2. If the Court declines to reconsider its denial of AMITA Health’s motion to quash:
 - a. Finding that AMITA Health has declined to comply with the Order for the purpose of obtaining appellate review of that ruling;
 - b. Holding AMITA Health in friendly direct civil contempt of court; and
 - c. Assessing a fine of \$1 per day against AMITA Health, subject to being purged by AMITA Health’s production of the subpoenaed medical records for *in camera* review or by operation of law, whichever comes first; and
3. For such other and further relief as this Court deems appropriate and just.

Dated: February 7, 2020

Respectfully submitted

AMITA HEALTH

By 
One of Its Attorneys

Joseph T. Monahan
John W. Whitcomb
Monique C. Patton
Monahan Law Group, LLC
55 West Monroe St.
Suite 3700
Chicago, Illinois 60603
312-419-0252
ARDC No. 6204744

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT

WILL COUNTY, ILLINOIS

THE PEOPLE OF THE)
STATE OF ILLINOIS,)

Plaintiff,)

vs.)

ISMAEL GOMEZ-RAMIREZ,)

Defendant.)

No. 2018 CF 1946

RECEIVED
DEC 17 PM 12:51
CLERK OF COURT

REPORT OF PROCEEDINGS had at the hearing of the
above-entitled cause, before the Honorable EDWARD ADAM
BURMILA JR., Judge of the Twelfth Judicial Circuit, Will
County, Illinois, on the 5th day of December, 2019.

APPEARANCES:

HON. JAMES W. GLASGOW,
WILL COUNTY STATE'S ATTORNEY
BY: MS. ALEXANDRA MOLESKY
Appearing on behalf of the People
of the State of Illinois;

MR. DANIEL M. WALSH,
Appearing on behalf of the Defendant;

MR. JOHN WITCOMB,
Appearing on behalf of AMITA Health
Adventist Medical Center Bolingbrook.

FELICIA J. RACANELLI
Official Court Reporter
CSR No. 084-003925

12/17/2019 12:51 PM

1 THE COURT: Ismael Gomez-Ramirez. All right. This is
2 18 CF 1946. Show that the defendant is here. There is a
3 Spanish language interpreter present. Ms. Molesky is here.

4 MS. MOLESKY: We have a representative from
5 Bolingbrook AMITA Hospital with respect to the subpoena
6 hearing.

7 THE COURT: Okay. This is the hearing?

8 MS. MOLESKY: Yes, Judge.

9 THE COURT: I would say 20 minutes.

10 MR. WALSH: Yes, Judge. Thank you.

11 (The above-entitled cause was passed
12 and later recalled:)

13 THE COURT: Ismael Gomez-Ramierz, 18 CF 1946. Show
14 that the defendant is here with Mr. Walsh. There is a
15 Spanish language interpreter present. Show that the
16 attorney for the interpleader hospital is present.

17 And your name for the record, sir?

18 MR. WHITCOMB: John Whitcomb, W-H-I-T-C-O-M-B.

19 THE COURT: And Ms. Molesky is here.

20 Ms. Molesky, what's before the Court?

21 MS. MOLESKY: Your Honor, there is the People -- the
22 People had sent a subpoena to Bolingbrook AMITA Hospital
23 for the medical records for the named victim in this case.
24 The hospital has communicated with us that that subpoena is

2025 MAR 17 10 25 AM '20

1 essentially insufficient. Our motion is before you to
2 quash the subpoena which we issued, so a hearing on that
3 matter has been set.

4 THE COURT: Your position on the motion, Ms. Molesky?

5 MS. MOLESKY: First with respect to the section which
6 is cited --

7 THE COURT: Well, I'm just asking. You're objecting?

8 MS. MOLESKY: Oh, of course, Judge.

9 THE COURT: Well, counsel represents the moving party,
10 so let me hear from him first.

11 Counsel?

12 MR. WHITCOMB: Your Honor, there was a subpoena issued
13 in this matter for Evelyn Rodriguez's date of birth.

14 THE COURT: If you can just go a little slower, it has
15 to be interpreted. I'm not being critical, I just didn't
16 know if you knew that was happening.

17 MR. WHITCOMB: From the State's Attorney for Evelyn
18 Rodriguez's date of birth, 11-15-87, from the date of her
19 hospitalization on October 6th, 2018, to the date of
20 discharge. A response was sent to the State's Attorney by
21 the hospital saying that it did not have the proper
22 documentation to obtain those medical records. The
23 subpoena reveals on its face that it falls within the scope
24 of a privileged -- physician/patient privilege. That the

1 Court is not to look further into the face of the request
2 itself.

3 The physician/patient privilege is codified in
4 Section 802 of the Code of Civil Procedure, although it
5 specifically has allegations that apply to criminal law as
6 well, and that is Section 735 ILCS 5/8-802. It states
7 specifically that no physician or surgeon shall be
8 permitted to disclose any information he or she may have
9 acquired in attending any patient in a professional
10 character necessary to enable him or her to professionally
11 serve the patient. There's exceptions under that. The
12 only exception that I believe applies to this situation is
13 section three, which says with the expressed consent of the
14 patient that those records may be allowed to be permitted
15 by subpoena.

16 In a domestic battery situation they actually
17 mention it in Section 8-802 at the end of the statute,
18 which it states that it's allowable with a HIPAA protective
19 order but only in case of grand jury summons and not for a
20 regular summons from the State's Attorney. So we can see
21 from that specific statement in the act itself that the
22 legislature considered cases such as this one whether it
23 was relevant and decided that only in certain circumstances
24 before a grand jury that it would be permitted. We are

03/17/20 14:25:32 CH

1 more than willing to give over those records to the Court
2 if there's a circumstance in which Ms. Rodriguez comes in
3 and signs a authorization for those to be released.

4 Now, it is my belief that from my review of the
5 records that Ms. Rodriguez was never notified that her
6 records were at issue. Under the Crime Victims Act and the
7 Constitution of the State of Illinois the right to notice
8 and a hearing before a court ruling on the request for
9 access to any of the victim's records for information or
10 communications are privileged or confidential by law.

11 THE COURT: Let me ask you a question. What records
12 of the State's Attorney's Office do you have to
13 substantiate that statement? You said that they failed in
14 their duty under the constitution. How do you know that?
15 I mean, you don't know what the internal records -- they
16 may have called her on the phone every day. You just said
17 to me that you've reviewed it and there was no notice
18 given, but you don't know that.

19 MR. WHITCOMB: Judge, I asked Ms. Molesky whether she
20 had been informed of the subpoena, she told me that they
21 had not informed her. I looked at the case record that --

22 THE COURT: You're taking -- you're saying that you
23 have an admission from the State's Attorney's Office that
24 they didn't?

1 MR. WHITCOMB: They didn't notify her that they were
2 putting her records at issue.

3 THE COURT: Okay. Go ahead.

4 MR. WHITCOMB: So the reason the motion says on
5 information and belief is that I have no personal knowledge
6 of that but I have heard from them regarding that. So --

7 THE COURT: Well, I'm only saying you were making a
8 statement of fact and I just want to make sure that the
9 record is clear as to where that information came from, but
10 you've cleared it up now.

11 Go ahead, finish what you're going to say. I
12 didn't mean to interrupt you.

13 MR. WHITCOMB: So we believe that we have two grounds
14 to not produce those records on the subpoena of the State's
15 Attorney. The first ground would be that it's privileged
16 information under the Physician/Patient Act.

17 The second one would be that procedurally they
18 are incorrect that there was not a notice at hearing to
19 determine whether she could come in and object to those
20 records being pursued by the State's Attorney, and that was
21 not done as far as I can tell. And from the notice that
22 was received it was actually not on a scheduled court date
23 before this Court.

24 THE COURT: Okay. A couple of questions that I have

1 for you before we let Ms. Molesky respond. And it's
2 completely anecdotal, it isn't controlling in any sense,
3 but this Court receives voluminous records from medical
4 facilities exactly of the same type that you are objecting
5 to turning over; and this is the first time that anybody
6 has ever come forward and stood on the grounds that you are
7 standing on to prevent the production of that information.

8 Do you believe that you have discovered some new
9 application of the law or you're just saying that all those
10 other hospitals and their attorneys and legal departments
11 and that stuff are just lax, that they violate the law
12 repeatedly and produce the information, give it to me to
13 review in camera without these requests? When I say
14 hundreds, I mean that literally. I'm not exaggerating.
15 I've got two more right here today without any of the
16 parties taking the stance that you are.

17 So do you think that your brother and sister
18 attorneys that represent these other medical facilities are
19 committing malpractice, that they let their clients be
20 taken advantage of by the State's Attorney and just turn
21 these records over? And this literally -- I have been here
22 on this court call for four years and this is the first
23 time that anybody has brought this up. Again, it's
24 completely anecdotal. You may have hit on the Rosetta

1 Stone as far as these revelations are --

2 MR. WHITCOMB: I'll answer that three different ways.

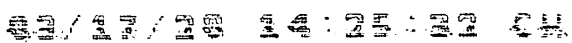
3 THE COURT: Go ahead.

4 MR. WHITCOMB: The first is I've represented the very
5 argument that I have before many courts --

6 THE COURT: Okay.

7 MR. WHITCOMB: -- because we represent hospitals, we
8 represent social workers, we represent physicians, we
9 represent psychiatrists when they're subpoenaed records.
10 We have made this argument many times regarding this. So
11 in terms of what I have done and made the argument, we have
12 made this argument many times before both civil and
13 criminal courts.

14 The case law that I provided to you, and I have
15 copies of other cases, talk about cases that are replete of
16 criminal cases in which they seek the victim's records or
17 the defendant's records in that case where they make the
18 patient/physician privilege. It's well-established law.
19 Whether they're doing it in this court or not, I have no
20 idea. Whether another attorney is committing malpractice
21 or making a judgment that they're not going to come in and
22 make that argument before this Court, I can't answer for
23 that but my client asked me to make this argument before
24 you because they believe that the patient privilege applies



1 and they believe under the witness and the US Constitution
2 that they were to required to have her noticed, which she
3 could come in here and agree to those records.

4 THE COURT: Well, you mean the state constitution?

5 MR. WHITCOMB: The state constitution, yes.

6 THE COURT: Let me ask you a different question now
7 that you have interjected the Constitution. There's a
8 gravamen of what I was wrestling with over this issue.
9 Frequently, and especially in the emergency room, the
10 victims make statements about the incident that have
11 nothing to do really with their medical treatment, okay.

12 Here is a hypothetical for you. The victim tells
13 the doctor in the emergency room this did not happen, I
14 made it all up. I'm mad at my husband, I made it up. I
15 fell down the stairs, it didn't happen. Are you telling me
16 that the defendant's federal constitutional right to be
17 confronted with his witnesses against him would be trumped
18 by your argument that they could not turn over that
19 completely exculpatory information unless the victim agreed
20 and the hospital got its protective order?

21 Here is the key to the whole thing. The
22 defendant is innocent and he would never know that because
23 the victim says oh, wait a minute, I still want to punish
24 him. This is completely hypothetical. I'm not accusing

1 anybody of doing this.

2 MR. WHITCOMB: Right.

3 THE COURT: And I know that I told the doctor that so
4 I'm not going to let Mr. Walsh ever see that I told the
5 doctor that. I'm not going to let him know, I won't agree.
6 And then you come in here and say well, the hospital isn't
7 going to agree either. So the defendant is deprived of
8 exculpatory information which Ms. Molesky has a duty to not
9 only ferret out but turn over, okay. And because of you --
10 and I don't mean you personally.

11 MR. WHITCOMB: I understand, Your Honor.

12 THE COURT: I'm not taking anything out on you,
13 counsel, I'm just using that in a generic sense.

14 And the victim can say well, I'm going to prevent
15 Mr. Walsh from ever finding out that there is absolute
16 evidence of my client's innocence and prevent that from
17 happening, and he's going to go ahead and get convicted and
18 go to the penitentiary and no one will ever know that that
19 statement was made. And so your argument is -- and it may
20 very well be. I'm not criticizing you, I just want to make
21 sure that the record is clear. You're saying that his
22 federal constitutional right to confront the witnesses
23 against him is blunted by the argument that you have made
24 here today?

1 MR. WHITCOMB: I would characterize the Sixth
2 Amendment confrontation clause, which is what Your Honor is
3 essentially asking me, is not blunted by that. But the
4 State's Attorney's duty to turn over records under the
5 Brady principal is not at issue here because she doesn't --

6 THE COURT: Well, it is because he'll never know. If
7 you're telling me that the victim can say I'm not going
8 along with this and that you can come in here on behalf of
9 the hospital and say we're not going along with it either,
10 you're doing exactly that because she will never know. No
11 one will ever -- you're telling me that I can't even look
12 at the records. That if I don't issue a specific order
13 that even I can't look at the records. So no one ever
14 would ever know.

15 MR. WHITCOMB: So I would walk through that the
16 federal case law that you have talked about actually deals
17 with --

18 THE COURT: I didn't mention any federal cases. This
19 is a hypothetical question.

20 MR. WHITCOMB: So my argument would be under the
21 constitution under the Sixth Amendment there are case law
22 that talk about the duty to confront somebody at trial. It
23 doesn't talk about pretrial discovery. And in fact those
24 cases specifically --

1 THE COURT: Now, hold on, counsel, let's not split
2 hairs here. He can't do his job if he doesn't have the
3 information, so it goes completely part and parcel. That's
4 why we got away from the specific discovery procedures of
5 Ritz and put the discovery statute into effect, so we could
6 get away from the argument that you are making. That's
7 where discovery exists.

8 MR. WHITCOMB: So Illinois has adopted per the People
9 versus Bean and People versus Foggy case that the defendant
10 can request records that they reasonably believe would have
11 evidence that would benefit their complaint. But in this
12 case the State's Attorney didn't. They have -- they have
13 no reason to believe that evidence exists to exonerate.
14 They have presented nothing before them saying that there's
15 going to be evidence that they would have to turn over that
16 they know of.

17 THE COURT: I'm not talking about instances where they
18 know about it.

19 MR. WHITCOMB: Okay.

20 THE COURT: I'm talking about an instance where they
21 don't know about it. Nobody knows about it except you and
22 the victim.

23 MR. WHITCOMB: And I believe that the privilege trumps
24 in those circumstances if the request comes from the

1 State's Attorney.

2 THE COURT: Okay, sir.

3 Ms. Molesky?

4 MS. MOLESKY: First with respect to that argument.

5 The Illinois Constitution, and I will state for the record

6 the victim is well aware in this case that her medical

7 records are at issue, but that is not what is controlling

8 here. I did not say that to counsel. What I said was it

9 doesn't -- as a matter of practice we are not required

10 under the Illinois Constitution to notify the victim of a

11 subpoena which is sent out for her medical records. What I

12 did also, and I will acknowledge I said to counsel, we

13 didn't send a copy of the subpoena to the victim in this

14 matter. We don't do that.

15 But pursuant to 725 ILCS 120/4.5,

16 subsection (c-5)(9) discusses the right to notice in

17 hearing before disclosure of confidential or privileged

18 information or records. That actually hits exactly on what

19 counsel is now suggesting should be done, which is when the

20 defense is seeking the medical records of the victim. At

21 that point then the victim has the right to be notified and

22 a right to a hearing if the victim objects. So that

23 argument that's being advanced is actually thwarted by the

24 very statute that's being cited to say that these records

1 are something that we are now somehow in violation of the
2 Illinois Constitution. So that's incorrect.

3 It is our position that a subpoena is a court
4 order. And to take language from Lisowski versus MacNeal
5 Memorial at 381 Ill. App. 3rd, 275, pinpointing 285,
6 indicates that any witness shall respond to any lawful
7 subpoena of which he or she has actual knowledge. And it
8 goes on to say that a subpoena is an order of the court, it
9 is not an overture by a party.

10 In this case the subpoenas which are issued on
11 behalf of the People are a court order as is evidenced
12 anecdotally by the very fact that medical records which are
13 subpoenaed by the State's Attorney's Office, who have a
14 duty to everybody in the State of Illinois, including
15 criminal defendants, to determine whether or not there's
16 potentially exculpatory information and that their due
17 process rights are upheld. That these medical records
18 which may contain information which are exculpatory to the
19 defendant are obtained. And they are turned over routinely
20 to the court for an in camera inspection to determine
21 whether or not there's any relevant information. And
22 assuming that there is relevant information, whether it's
23 inculpatory or exculpatory, those records are then turned
24 over to the attorneys. And the discovery rules also

1 discuss what is to be done with those records.

2 And as counsel indicated within the statute which
3 governs, at least the doctor/patient privilege, the
4 legislature does certainly recognize that there are
5 domestic battery cases and aggravated domestic battery
6 cases. But to say that essentially for those cases the
7 only ones that the victim doesn't sign off would be a grand
8 jury subpoena ignores any kind of misdemeanor domestic
9 battery cases which could potentially come up, ignores any
10 cases where the People are seeking to charge by way of an
11 information or any other instance wherein the grand jury
12 would be utilized.

13 THE COURT: Ms. Molesky, first of all, counsel has
14 every right to contest the subpoenas.

15 MS. MOLESKY: Yes, Judge.

16 THE COURT: The fact that it's issued and it is a
17 court order is an ipso facto thing. And there have been
18 occasions where you have filed or subpoenaed materials, and
19 this is not a rubber stamp procedure that I have denied and
20 not turned over the records; is that correct?

21 MS. MOLESKY: Correct.

22 THE COURT: But at the same time the opportunities for
23 the State to return to the grand jury post-indictment are
24 almost nonexistent.

1 MS. MOLESKY: We are unable to do so at that point.

2 THE COURT: You wouldn't be able to turn around
3 tomorrow and now go back to the grand jury and say now we
4 want you to issue a subpoena because the hospital is
5 balking at turning it over.

6 MS. MOLESKY: We'd be unable to do that. The case has
7 already been charged.

8 THE COURT: So the only procedure you'd be able to use
9 is the court and not the grand jury post-indictment.

10 MS. MOLESKY: Correct, Judge.

11 THE COURT: Okay. Go ahead.

12 MS. MOLESKY: And so often times we become aware of
13 medical records which are in existence after we have
14 received discovery or any other reports from either law
15 enforcement agencies or in subsequent conversations even,
16 sometimes even with defense counsel. And so, again, we are
17 under an obligation to attempt to obtain those records.
18 And my response is directed just at counsel's argument that
19 the subpoena lacks proper documentation. And so that is
20 what our position is that the subpoena is in and of itself
21 a court order which is subject to protections by the court,
22 as are DCFS records or other records which we subpoena
23 which go to the judge who is presiding over the matter to
24 review and to determine whether or not those records

1 contain relevant information which should be disclosed to
2 the party. This is not some kind of fishing expedition.

3 In addition, Judge, federal law under the HIPAA
4 protections also recognizes that in cases where there is
5 potential, at least in this courtroom with respect to
6 domestic violence cases, that protected records can be
7 disseminated and disclosed to the court by law enforcement
8 agencies. And the People of the State of Illinois through
9 the State's Attorney's Office are one arm of law
10 enforcement and these investigatory procedures, as Your
11 Honor indicated, cannot return to the grand jury once a
12 case has been charged to be able to obtain these to comply
13 with the minimum of the 13 exceptions which are set forth
14 that counsel indicates in the motion.

15 Finally with respect to the civil procedure and
16 criminal procedure interacting together, there have been
17 interactions where the civil procedure which may govern,
18 and that I believe is People versus Sutton, which is cited
19 in counsel's motion, even there in the interplay between
20 the Code of Civil Procedure and certain protections under
21 the Criminal Procedure Code, the Criminal Procedure Code
22 has actually governed. And so the doctor/patient privilege
23 is not an absolute privilege. Certainly there are certain
24 limitations to it, which is discussed in those cases by the

1 reviewing courts. And the defendant's due process rights
2 and by virtue of that due process right our obligation as
3 the prosecuting attorneys would certainly be something that
4 the doctor/patient privilege in limited instances would
5 yield to the right to confrontation, and again, due
6 process. And so based upon that we are asking that the
7 Court order that the subpoena be enforced and that these
8 medical records be turned over.

9 THE COURT: Before I let counsel respond, anything
10 that you want to say, Mr. Walsh?

11 MR. WALSH: Judge, only that the reports and the
12 victim's petition for order of protection indicate that she
13 was drinking that evening, so her BAC could be in those
14 medical records that could be Brady material.

15 THE COURT: Counsel, any response that you want to
16 make?

17 MR. WHITCOMB: The Constitution of the State of
18 Illinois specifically gives the right to notice and hearing
19 before this Court before issuing the subpoena, before
20 issuing the subpoena. She acknowledged what she said to me
21 was that she was not given notice of the subpoena when it
22 was issued. The opportunity is for her to come in here and
23 assert her rights of what she is --

24 THE COURT: But you don't represent her.

1 MR. WHITCOMB: I don't represent her and that's why
2 we're standing in her stead saying we don't know what she
3 wants because we don't have a -- she was not notified. She
4 did not appear at a hearing. If she came in and said I
5 agree to have those records released, we would do so
6 instantly. So the issue here is that we're standing in her
7 stead because she did not get notice and a hearing and an
8 opportunity to be heard.

9 I believe that Ms. Molesky's argument regarding
10 the physician/patient privilege would make that -- the
11 entire statute nullified. Her argument is basically if --
12 she has an obligation to turn over everything under that
13 statute. The cases are replete of criminal cases where
14 they've withheld those records from that because they fall
15 within the privilege.

16 THE COURT: Well, I don't think that was what
17 Ms. Molesky's argument was. I mean, she can certainly
18 speak for herself. She's talking about turning over what's
19 relevant. I don't think that she's talking about just
20 getting a thousand pages of medical records and just
21 turning them over. And that belies the court's review of
22 the materials beforehand.

23 I mean, there have been instances where I've
24 gotten a thousand pages of medical records, and some people

1 think I don't read them but I do, and I've turned over one
2 page out of it. In fact, I just did that in a case with
3 Mr. Bretz not too long ago of hundreds of pages of medical
4 records because I felt that that one particular -- again,
5 completely anecdotal, was exculpatory and turned it over.

6 But are you in this building on a regular basis,
7 counsel?

8 MR. WHITCOMB: I am, Your Honor.

9 THE COURT: Okay. What day next week are you back?

10 MR. WHITCOMB: I'm actually here next Thursday.

11 THE COURT: Well, I'm not going to be here. My wife
12 has a medical procedure on the 12th and I'm not going to be
13 here. So another day next week?

14 MR. WHITCOMB: I can give you dates that I could
15 appear next week.

16 THE COURT: I'm also not going to be here on the 19th
17 for that same purpose. Let's see when you're available.

18 MR. WHITCOMB: So next week I'm available on Monday,
19 I'm available on Wednesday.

20 THE COURT: Mr. Walsh, your schedule, are you
21 available on the 11th?

22 MR. WALSH: Yes, I am, Judge.

23 THE COURT: Okay. 9:00 o'clock on the 11th. I'll
24 have the file, Rosie.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Thank you all very much.

MR. WHITCOMB: Thank you, Your Honor.

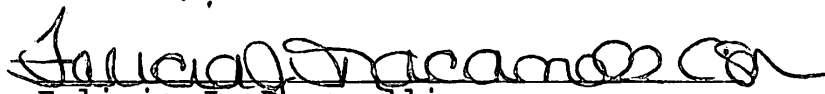
(Which were all the proceedings had.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

I, FELICIA J. RACANELLI, Official Court Reporter
for the Circuit Court of Will County, Twelfth Judicial
Circuit of Illinois, do hereby certify that I reported in
shorthand the proceedings in the above-entitled cause; that
I thereafter caused the foregoing to be transcribed into
typewriting, which I hereby certify to be a true and
accurate transcript of the proceedings had before the
Honorable EDWARD ADAM BURMILA JR., Judge of said Court.

Dated at Joliet, Will County, Illinois, this 5th
day of December, 2019.



Felicia J. Racanelli
Official Court Reporter
CSR No. 084-003925

FILED

1 STATE OF ILLINOIS)
) ss:
2 COUNTY OF W I L L)

2020 MAR 18 PM 1:59

WILL COUNTY ILLINOIS

3 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
4 WILL COUNTY, ILLINOIS

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS,)
7 Plaintiff,)
8 -vs-)
9 ISMAEL GOMEZ-RAMIREZ,)
 Defendant.)

No. 2018 CF 1946

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Report of proceedings had in the above-entitled
cause before the HONORABLE EDWARD BURMILA, JR., Judge of the
Circuit Court of Will County, Illinois, on the 18th day of
December, 2019.

A P P E A R A N C E S :

MS. SARA SHUTTS,
Assistant State's Attorney
on behalf of the Plaintiff;

MR. DANIEL WALSH,
Attorney At Law
on behalf of the Defendant;

Also present: MR. JOHN WHITCOMB,
Attorney At Law

APRIL JEAN NELSON, C.S.R., R.P.R.
LICENSE NO. 084-004487
COURT REPORTER
WILL COUNTY COURTHOUSE
JOLIET, ILLINOIS 60432

2020 MAR 18 PM 1:59

1 THE COURT: This is 18 CF 1946, People versus Ismael
2 Gomez-Ramirez. Show that the defendant is here with
3 Mr. Walsh. There is a Spanish language interpreter here.
4 Counsel is here. Miss Shutts is here.

5 And I took the arguments that you made into
6 account -- and show that counsel is here on behalf of the
7 respondent, an objecting hospital -- and I went and looked at
8 the language -- of course, I'm familiar with the one in the
9 Federal Constitution and not so much with the Illinois State
10 Constitution, but both Section 8 of the Illinois State
11 Constitution and, of course, the 6th Amendment in the United
12 States Constitution say that defendants in criminal cases are
13 entitled to compulsory process. Counsel now argues on behalf
14 of the hospital that compulsory process doesn't really mean
15 that, but that there are strings attached. So what my ruling
16 in this case is going to be is I'm ordering you to produce the
17 information for an in camera inspection before I rule on
18 whether or not the hospital is entitled to the protective
19 order.

20 Now you told me the last time that you were here
21 that you were doing this at the specific direction of your
22 client. So I'm gonna give you a little bit of time to think
23 about whether you're going to produce the records or what
24 you're going to do, but I want you to bring with you the next

03/18/20 15:23:40 CH

1 time, if it's not going to be today, whoever it is that I'm
2 going to hold in contempt. Because I'm not going to hold you
3 in contempt if they refuse to turn the records over, since
4 you're doing this specifically at their direction.

5 So what we're doing right now is I'm ordering you to
6 produce the records for an in camera inspection. So how much
7 time do you need to decide whether you're going to comply with
8 that?

9 MR. WHITCOMB: I would need to contact my client.

10 THE COURT: Okay. So when do you want to come back?
11 Whenever you'd like to do that.

12 MR. WHITCOMB: I'm available January 13th.

13 THE COURT: Perfect, January the 13th.

14 Mr. Walsh?

15 MR. WALSH: Judge, is there any way my client's
16 presence could be waived that day?

17 THE COURT: Well, I don't know what's going to
18 happen, so we better have him here.

19 MR. WALSH: Okay. Any chance we can do the 15th,
20 Wednesday the 15th?

21 THE COURT: Counsel, what about your schedule?

22 MR. WHITCOMB: 15th is fine.

23 THE COURT: Miss Shutts?

24 MS. SHUTTS: That's fine, your Honor.

1 THE COURT: All right. January the 15th.

2 And, Miss Shutts, draft an order.

3 MS. SHUTTS: Yes, your Honor.

4 THE COURT: Okay. Thank you both very much. All of
5 you, really.

6 (Which were all the proceedings had in this
7 cause this date.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

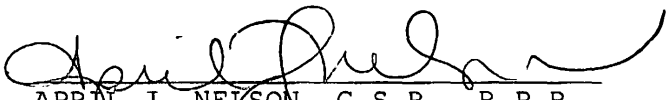
24

03/18/20 15:23:40 CH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

I, APRIL JEAN NELSON, a court reporter for the
Circuit Court of Will County, Twelfth Judicial Circuit of
Illinois, do hereby certify that I reported in shorthand
the proceedings had on the hearing in the aforementioned
cause; that I thereafter caused the foregoing to be
transcribed into typewriting, which I hereby certify to be
a true and accurate transcript of the proceedings had
before the Honorable EDWARD BURMILA, JR., Judge of said
Court.


APRIL J. NELSON, C.S.R., R.P.R.
License No. 084-004487

DATED this 19th day
of December, 2019.

03/18/20 15:23:40 CH

1 STATE OF ILLINOIS)
2 COUNTY OF WILL) ss:

FILED R
2020 MAR 16 PM 3:25

3 THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
4 WILL COUNTY, ILLINOIS

5 PEOPLE OF THE STATE OF ILLINOIS,)
6 Plaintiff,)
7 -vs-) No. 2019 CF 1946
8 ISMAEL GOMEZ-RAMIREZ,)
9 Defendant.)

10

11 Report of proceedings had in the
12 above-entitled cause before the Honorable EDWARD
13 BURMILA, Judge of the Circuit Court of Will County,
14 Illinois, on the 19th day of February, 2020.

15

16 A P P E A R A N C E S :

17 Alexendra Molesky
18 Assistant State's Attorney
on behalf of the State of Illinois;

19 Dan Walsh
20 Attorney at Law
on behalf of the Defendant;

21 John Whitcomb, attorney for AMITA Health.

22 JULIE A. ENRIGHT C.S.R.,
23 LICENSE NO. 084-004518
COURT REPORTER
24 WILL COUNTY COURTHOUSE
JOLIET, ILLINOIS 60432

03/17/20 08:58:11 CH

1 (Proceedings had in open Court)

2 THE COURT: This is Ismael Gomez-Ramirez, 18 CF
3 1946. Show that Mr. Walsh is here. Show there is a
4 representative of the hospital present. Where is Ms.
5 Molesky?

6 MS. MOLESKY: Right here, Judge.

7 THE COURT: Show that Ms. Molesky is here for the
8 People. Matter comes on for reconsideration. The
9 Court has received the additional plead --

10 MR. WALSH: Judge, I am sorry to interrupt. My
11 client is not in the room.

12 THE COURT: Can you get him in?

13 MR. WALSH: He needs the interpreter as well.

14 THE COURT: Okay. As soon as you get the
15 interpreter here, let me know.

16 (Case passed and recalled)

17 MR. WALSH: Judge, on Ismael Gomez-Ramirez my
18 client is not here yet. I left him a message yesterday
19 to be here. I don't know, do you want to address the
20 matter without him?

21 THE COURT: Do you have other courtrooms to go to?

22 MR. WALSH: Yes.

23 THE COURT: Can you come back?

24 MR. WALSH: Yes, I can.

03/17/20 08:58:11 CH

1 (Case passed and recalled)

2 MR. WALSH: Ismael Gomez-Ramirez. My client and
3 the interpreter are here.

4 THE COURT: This is 18 CF 1946. Show the defendant
5 is here with counsel. There is a Spanish language
6 interpreter present. Show that the hospital is present
7 through counsel. Ms. Molesky is here for the People.
8 Anything that you want to add, Mr. Walsh?

9 MR. WALSH: There is not.

10 THE COURT: Anything that you want to add?

11 MS. MOLESKY: No, your Honor.

12 THE COURT: Counsel?

13 MR. WHITCOMB: No, I have been fully heard.

14 THE COURT: I appreciate the fact that the sides
15 have been prompt in providing the Court with materials
16 that augment their arguments. Show that the matter
17 comes on for the Court's ruling on the motion to
18 reconsider. Show that the Court determines number one,
19 that the defendant has expressed a claimed need for
20 these records. Number two, that the State's Attorney
21 subpoenaed the records, not the defendant. The State's
22 Attorney has a continuing and ongoing duty to produce
23 both inculpatory and exculpatory information and they
24 must provide that on an ongoing basis pursuant to the

1 Supreme Court Rules on discovery.

2 Show that the hospital pointed the Court to
3 the case of People versus Bean, which the Court finds
4 in the main is applicable, but in this particular case
5 and in my opinion, People versus Bean supports a case
6 by case analysis of the production of records of this
7 type. In addition to that, the Illinois Supreme Court
8 relied on the United States Supreme Court decision in
9 Pennsylvania versus Ritchie, R-i-t-c-h-i-e, and the
10 very order that the Court issued for an in camera
11 inspection is what the U.S. Supreme Court case suggests
12 should be the proposed way of proceeding in these
13 matters. The Court also finds that the State has
14 complied with Article 1, Section 8.1(a)(2) of the
15 Illinois State Constitution. The individual hospital
16 in this case, the Court finds is the contender. There
17 is no particular person who defied the Court's order,
18 including counsel. I will state for the record that
19 when a representative of the hospital was ordered to
20 come forward, they in fact did, recognizing the Court's
21 authority to have them be present. As a result, the
22 motion to reconsider is denied. The Court finds the
23 contender hospital in direct civil contempt. It is the
24 Court's order -- it is the Court's intention, excuse

03/17/20 08:58:11 CH

1 me, that the hospital comply. It is not the Court's
2 intent to punish the hospital. All right. They can
3 absolve themselves of contempt by complying at any time
4 with producing the records for an in camera inspection.
5 The hospital is fined \$500 per day that they fail to
6 honor the Court's order. That fine is suspended during
7 the 30-day period in which the contender can appeal
8 this decision. If, in fact, the contender appeals,
9 that fine will be stayed until the Appellate Court
10 rules in the case. So we need someone to draft an
11 order.

12 MR. WHITCOMB: I have drafted an order, your Honor.
13 I have everything that you had stated except for the
14 last about the stay of the order.

15 THE COURT: Okay. As long as Mr. Walsh and Ms.
16 Molesky initial it, we will be good to go.

17 MR. WHITCOMB: Thank you.

18 THE COURT: You can stand down and now we can
19 address where we are with the underlying matter unless
20 you are going to file any motions directed at the
21 charge itself, Mr. Walsh.

22 MR. WALSH: I don't know if I will do that or not.
23 Can we please come back March 18th?

24 THE COURT: What about that, Ms. Molesky?

03/17/20 08:58:11 CH

1 MS. MOLESKY: On defendant's motion, no objection.

2 MR. WALSH: Yes, defendant's motion.

3 THE COURT: You must be here March 18th at 9:00
4 o'clock. Thank you all.

5 MR. WALSH: Thank you.

6 (Later)

7 THE COURT: See the order signed on 18 CF 1946.

8 (Which were all the proceedings had)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

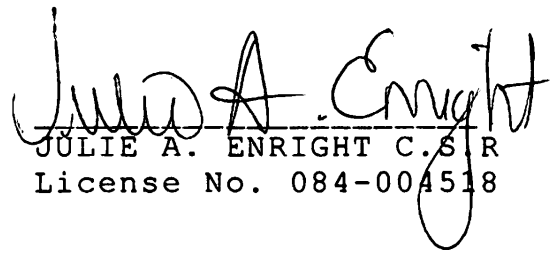
24

03/17/20 08:58:11 CH

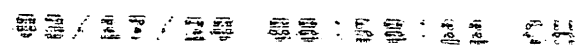
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

I, JULIE A. ENRIGHT, court reporter for the
Circuit Court of Will County, Twelfth Judicial Circuit
of Illinois, do hereby certify that I reported in
shorthand the proceedings had on the hearing in the
aforementioned cause; that I thereafter caused the
foregoing to be transcribed into typewriting, which I
hereby certify to be a true and accurate transcript of
the proceedings had before the Honorable EDWARD
BURMILA, Judge of said Court.


JULIE A. ENRIGHT C.S.R.
License No. 084-004518

DATED this 16th day
of March, 2020



APPEAL TO THE APPELLATE COURT OF ILLINOIS
JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

PEOPLE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 3-20-0121

Circuit Court No: 2018CF001946

Trial Judge: EDWARD BURMILA JR.

v.

ISMAEL GOMEZ-RAMIREZ AND AMITA

HEALTH ADVENTIST BOLINGBROOK

HOSPITAL

Defendant/Respondent

E-FILED

Transaction ID: 3-20-0121

File Date: 5/1/2020 4:12 PM

Barbara Trumbo, Clerk of the Court

APPELLATE COURT 3RD DISTRICT

CERTIFICATION OF SUPPLEMENT TO THE RECORD

The supplement to the record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Supplement to the Common Law Record Section, containing 0 pages

1 Volume(s) of the Supplement to the Report of Proceedings Section, containing 7 pages

1 Volume(s) of the Supplement to the Exhibits Section, containing 0 pages

I do further certify that this certification of the supplement to the record pursuant to Supreme Court Rule 324, issued out of my office this 1 DAY OF MAY, 2020



(Clerk of the Circuit Court or Administrative Agency)

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

PEOPLE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 3-20-0121

Circuit Court No: 2018CF001946

Trial Judge: EDWARD BURMILA JR.

v.

ISMAEL GOMEZ-RAMIREZ AND AMITA

HEALTH ADVENTIST BOLINGBROOK

HOSPITAL

Defendant/Respondent

SUPPLEMENT TO THE RECORD - TABLE OF CONTENTS

Page 1 of 1

Section

Page

SUPPLEMENT TO THE COMMON LAW RECORD SECTION

SUP C 0

SUPPLEMENT TO THE REPORT OF PROCEEDINGS SECTION

SUP R 3-SUP R 9

SUPPLEMENT TO THE EXHIBITS SECTION

SUP E 0

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

PEOPLE STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 3-20-0121

Circuit Court No: 2018CF001946

Trial Judge: EDWARD BURMILA JR.

v.

ISMAEL GOMEZ-RAMIREZ AND AMITA

HEALTH ADVENTIST BOLINGBROOK

HOSPITAL

Defendant/Respondent

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

Date of

Proceeding

Title/Description

Page No.

01/15/2020

REPORT OF PROCEEDINGS - SANDY EBERLE

SUP R 4-SUP R 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

THE PEOPLE OF THE)
STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.) No. 18 CF 1946
)
ISMAEL GOMEZ-RAMIREZ,)
)
)
Defendant.)

Andrea Lynn Chasteen
Will County Circuit Clerk
Twelfth Judicial Circuit Court
Electronically Filed
18CF1946
Filed Date: 4/15/2020 10:41 AM
Envelope: 9079887
Clerk: JR

REPORT OF PROCEEDINGS had at the hearing in the
above-entitled cause before the HONORABLE EDWARD A.
BURMILA, JR., Judge of the Twelfth Judicial Circuit, Will
County, Illinois, on Wednesday, the 15th day of
January, 2020.

COUNSEL PRESENT:

MR. JAMES W. GLASGOW
State's Attorney of Will County
BY: MS. SARA SHUTTS
Assistant State's Attorney of Will County
appeared on behalf of
The People of the State of Illinois;

MR. DANIEL WALSH
Attorney at Law
appeared on behalf of the Defendant;

ALSO PRESENT:

MR. JOHN WHITCOMB

Reported by: Sandy Eberle, RPR, CRR
Official Court Reporter
License No: 84-003229

1 (Whereupon, the following
2 proceedings were had before
3 Court and counsel in open
4 court:)

5 MR. WALSH: Judge, can I please approach on Ismael
6 Gomez-Ramirez? We do have the interpreter here. Judge,
7 he's approaching now.

8 THE COURT: This is 18 CF 1946. Show the defendant
9 is here with Mr. Walsh. There is a Spanish language
10 interpreter present. Counsel is here on behalf of the
11 respondent and potential contender, Amita Health.
12 Ms. Shutts is here.

13 There was a representative of the hospital
14 here. Are they still here?

15 MR. WHITCOMB: Mr. Benz is here, Your Honor.

16 THE COURT: I said earlier he could leave if that's
17 the case but he's here. I will note that as well.
18 Ms. Shutts is here.

19 Ms. Molesky is the one that's been appearing on
20 this. Have you spoken to her? Do you intend to respond
21 to counsel's motion to reconsider in this request for what
22 he refers to as a friendly contempt in writing?

23 MS. SHUTTS: Judge, I guess in the interest of
24 maintaining the best possible record, the People would ask

1 leave to file a response in writing.

2 THE COURT: How long do you think that's going to
3 take you?

4 MS. SHUTTS: I think that can be accomplished by
5 next Friday.

6 THE COURT: Okay. I will note that I agreed with
7 counsel's inferences in here. If there was a contempt
8 citation that was issued, it would not be a criminal
9 contempt because I'm not trying to punish anyone. It
10 would be a civil contempt because I'm trying to enforce
11 compliance, so if that is the case, it would be civil
12 contempt.

13 When do you think you're going to have that
14 done, did you say?

15 MS. SHUTTS: I'll have that done by the 24th, I
16 believe, of January, Your Honor.

17 THE COURT: The State is given until the close of
18 business to respond in writing to counsel's motion to
19 reconsider.

20 And, Counsel, when are you next in the
21 facility?

22 MR. WHITCOMB: Your Honor, mental health court is
23 normally on Thursday so those are the days.

24 THE COURT: So would you be here on the 30th?

1 MR. WHITCOMB: Yes, Your Honor.

2 THE COURT: All right. We'll set this for hearing
3 then or additional argument at 9:00 a.m. on the 30th and
4 the Court will recognize Mr. Benz's appearance here today,
5 continue that over to the 30th, but he does not have to
6 reappear.

7 MR. WHITCOMB: Thank you, Your Honor.

8 MR. WALSH: Judge, will my client be required to be
9 here that day?

10 THE COURT: I think you better. Thank you.

11 MR. WHITCOMB: For the record, we gave notice to
12 Ms. Rodriguez of today's hearing and did a notice
13 specifically for that.

14 THE COURT: Did she respond?

15 MR. WHITCOMB: She did not respond to me, the
16 letter. We also told her to contact the state's
17 attorney.

18 THE COURT: Did that happen, Ms. Shutts, do you
19 know?

20 MS. SHUTTS: To my knowledge, we have not heard from
21 Ms. Rodriguez yet at this point.

22 THE COURT: I'll need something affirmative in
23 regard to that on the 30th then.

24 MS. SHUTTS: Yes, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE COURT: Thank you.

(Which were all the proceedings
had in said matter on said
date.)

Table of Contents of the Record on Appeal

COMMON LAW RECORD (Vol. 1 of 1)		
Document	Date Filed	Page No.
Affidavit In Support of Probable Cause	10/08/18	C 5
Mittimus For Failure To Give Bail Filed	10/08/18	C 6
Pretrial Risk Assessment Instrument (Secured)	10/08/18	C 7
Criminal Complaint	10/10/18	C 8
Appearance	10/10/18	C 10
Sheriff Fee Bill Filed	10/10/18	C 11
Bail Bond Deposit Posted on 18NB2671	10/10/18	C 12
Sheriff Fee Bill	10/16/18	C 14
Sheriff Fee Bill	10/16/18	C 15
Illinois State Police Court Disposition Form	10/23/18	C 16
Bill of Indictment	10/24/18	C 17
List of Witnesses	12/04/18	C 20
Notification of Reports Summarizing Witnesses Oral Statement	12/04/18	C 21
Statements of the Defendant	12/04/18	C 22
Physical Evidence	12/04/18	C 23
Record of Conviction of the Defendant	12/04/18	C 24
Grand Jury Minutes	12/04/18	C 25
State's 1st Supplemental Discovery Notification of Reports Summarizing Witnesses Oral Statements	01/18/19	C 27
State's Supplemental Notification of Reports Summarizing Witnesses Oral Statements	03/26/19	C 29

Table of Contents of the Record on Appeal (cont'd)

Document	Date Filed	Page No.
Notice of Motion	11/07/19	C 31
Motion by AMITA Health to Quash Subpoena (Secured)	11/07/19	C 33
Exhibits A, B, C, D, & E to Motion to Quash Subpoena (Secured)	11/07/19	C 34
Correspondence	11/07/19	C 35
Order Denying Motion to Quash Subpoena	12/18/19	C 38
Notice By Amita Health of Its Provision of Notice to a Patient Regarding the State's Attorney's Subpoena	01/08/20	C 39
Notice of Motion	01/09/20	C 47
Amita Health's Motion For Reconsideration or, in the Alternative, for Entry of Friendly Civil Contempt	01/09/20	C 49
Notice of Filing	01/24/20	C 99
Response to Motion to For Reconsideration or in the Alternative, for Entry of Friendly Civil Contempt	01/24/20	C 100
Notice of Filing	02/07/20	C 106
AMITA Health's Reply in Support of Its Motion for Reconsideration or in the Alternative, for Entry of Friendly Civil Contempt	02/07/20	C 108
Order Denying Motion for Reconsideration and Granting Motion for Entry of Friendly Civil Contempt	02/19/20	C 116
AMITA Health's Reply in Support of Its Motion for Reconsideration or in the Alternative, for Entry of Friendly Civil Contempt	02/19/20	C 117

Table of Contents of the Record on Appeal (cont'd)

Document	Date Filed	Page No.
Notice of Filing of Notice of Appeal	02/28/20	C 126
Notice of Appeal	02/28/20	C 128
Notice of Filing of Amended Notice of Appeal	03/03/20	C 130
Amended Notice of Appeal	03/03/20	C 132
Notice of Filing of Request for Preparation of Record on Appeal	03/13/20	C 136
Request for Preparation of Record on Appeal	03/13/20	C 138
Notice by Appellate Court Clerk of Due Dates for Report of Proceedings and Record on Appeal	03/13/20	C 139
Circuit Court Docket Sheet	03/13/20	C 141
SECURED COMMON LAW RECORD (Vol. 1 of 1)		
Pretrial Risk Assessment Instrument	10/08/18	Sec C 4
Motion by AMITA Health to Quash Subpoena	11/07/19	Sec C 6
REPORT OF PROCEEDINGS		
Report of Proceedings (Initial Hearing on Motion to Quash Subpoena)	12/05/19	R 2 – R 23
Report of Proceedings (Ruling on Motion to Quash Subpoena)	12/18/19	R 24 – R 28
Report of Proceedings (Ruling on Motion for Reconsideration or for Entry of Friendly Civil Contempt)	02/19/20	R 29 – R 35

Table of Contents of the Record on Appeal (cont'd)

Document	Date Filed	Page No.
SUPPLEMENT TO REPORT OF PROCEEDINGS (Vol. 1 of 1)		
Report of Proceedings (Initial Hearing on Motion for Reconsideration or for Entry of Friendly Civil Contempt)	01/15/20	Sup. R 4 – Sup. R 9

CERTIFICATE OF FILING AND SERVICE

I, Dana V. M. Engel, an attorney, hereby certify that on July 10, 2020, I electronically filed the foregoing **APPELLANTS' BRIEF OF AMITA HEALTH** with the Clerk of the Appellate Court of Illinois, Third District, by using the Odyssey eFileIL system.

I further certify that the following participants in this matter are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Thomas D. Arrado
State's Attorneys Appellate
Prosecutor's Office
tarado@ilsaap.org

Thomas D. Arrado
State's Attorneys Appellate
Prosecutor's Office
3rddistrict@ilsaap.org

Sarah L. Beuning
Illinois Coalition Against
Sexual Assault
sbeuning@icasa.org

I further certify that the following participants in this matter are not registered service contacts for this case on the Odyssey eFileIL system, and thus were served on July 10, 2020, by transmitting a copy from my e-mail address to the e-mail address of record designated for each of those participants:

Daniel M. Walsh
Law Offices of Daniel M. Walsh
dan@attorneydanwalsh.com

Terry Campos
National Crime Victim Law
Institute
tcampos@lclark.edu

Mallory Littlejohn
Chicago Alliance Against
Sexual Exploitation

Matthew Davison
Veronique Baker
Illinois Guardianship and
Advocacy Commission,
Legal Advocacy Service
Matthew.Davison@Illinois.gov
Veronique.Baker@Illinois.gov

Joseph A. Roselius
Michael Geller
Eleni Christou
DLA Piper LLP (US)
joseph.roselius@us.dlapiper.com
michael.geller@us.dlapiper.com
eleni.christou@us.dlapiper.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Dana V. M. Engel
Dana V. M. Engel