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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARLENE HENDERSON, et al.,
Plaintiffs,
v.
COUNTY OF SANTA CRUZ, et al.,
Defendants.

Case No. [14-cv-03544-WHO](#)

ORDER ON DISCOVERY DISPUTE

Re: Dkt. No. 108

James Henderson, a former inmate at the Santa Cruz County Jail Mental Health Unit, murdered his parents Joseph and Edyth Henderson sometime after he was released from jail. In this action, Marlene Henderson, James's sister and daughter of Joseph and Edyth, alleges that various Santa Cruz County municipal agencies acted wrongfully in releasing James Henderson. This case was originally stayed pending the outcome of the criminal case. The stay was lifted once James Henderson was convicted of two counts of first degree murder with special circumstances. Parties are now in the midst of discovery and dispute over requests that would require defendants to produce the medical and health records of James Henderson.

Defendants believe that they cannot produce the medical and mental health records of James Henderson without his authorization or a court order. Plaintiffs contend that James Henderson lacks the capacity to consent to the release of his records by reason of his severe mental disabilities, which was alleged in his criminal trial to be the impetus of his murder of his parents. Instead, they argue that defendants are still required to produce the requested records because the parties have entered into a qualified protective order.

Plaintiffs point to the applicable provisions of the federal Health Insurance Portability and Accountability Act ("HIPAA"), 45 C.F.R. § 164.512(e). Section 164.512 subsection (e) of

1 HIPAA allows disclosure of information in the course of judicial and administrative proceedings.
2 Disclosures may be compelled “[i]n response to a subpoena, discovery request, or other lawful
3 process, that is not accompanied by an order of a court or administrative tribunal,” if either the
4 individual whose information has been requested has been given notice of the request or
5 reasonable efforts have been made by the requesting party to secure a “qualified protective order.”
6 See 45 C.F.R. § 164.512(e)(ii)(A)-(B).

7 A qualified protective order is defined as “an order of a court or of an administrative
8 tribunal or a stipulation by the parties to the litigation or administrative proceeding” that meets the
9 following two requirements:

- 10 (A) Prohibits the parties from using or disclosing the protected health
11 information for any purpose other than the litigation or proceeding for
12 which such information was requested; and
13 (B) Requires the return to the covered entity or destruction of the
14 protected health information (including all copies made) at the end of
15 the litigation or proceeding.

16 45 C.F.R. § 164.512(e)(v).

17 Here, parties have agreed to a protective order. [Dkt. No. 81]. Section 7.1 of the
18 protective order satisfies the first requirement as it limits the use of protected material disclosed or
19 produced in this case for litigation purposes only. Section 13 satisfies the second requirement
20 because it details the process at final disposition, particularly that “each Receiving Party must
21 return all Protected Material to the Producing Party or destroy such material.” Notably, under
22 section 14, parties have already “agree[d] that all documents produced by Defendant County of
23 Santa Cruz containing James Henderson’s medical, mental health or other sensitive information
24 shall be designated as ‘CONFIDENTIAL’ under this Protective Order and handled accordingly.”


25 Therefore, I find that HIPAA does not preclude production of the medical and mental
26 health records because the protective order adequately safeguards James Henderson’s privacy
27 rights. See, e.g., *Hutton v. City of Martinez*, 219 F.R.D. 164, 167 (N.D. Cal. 2003) (ordering
28 municipality entity to produce medical and workers’ compensation files of police officer in civil
rights suit because there was already a protective order in the case that adequately protected police
officer’s privacy); *Allen v. Woodford*, No. CVF051104OWWLJO, 2007 WL 309485, at *5 (E.D.
Cal. Jan. 30, 2007) (45 CFR § 164.512(e) permits the disclosure of third-party medical records

1 covered by HIPPA so long as there is a satisfactory protective order in place); *Mayfield v. Orozco*,
2 No. 2:13-CV-02499 JAM AC, 2016 WL 8731367, at *3 (E.D. Cal. July 1, 2016) (ordering
3 production of documents and responses to interrogatories subject to a HIPAA-compliant
4 protective order).¹

5 IT IS HEREBY ORDERED that defendants produce to plaintiff within 20 days of this
6 Order the requested medical and mental health records, in accordance with the HIPAA-compliant
7 protective order in this case. Plaintiffs also seek an order for production for other categories of
8 documents that defendants previously agreed to produce. Defendants indicate that they will
9 produce them on or before May 1, 2020.

10 **IT IS SO ORDERED.**

11 Dated: April 6, 2020

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14 William H. Orrick
15 United States District Judge
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25 _____
26 ¹ Defendants' cite to the five-factor test in *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 553 (9th
27 Cir. 2004) is inapposite. The Ninth Circuit in that case was evaluating whether a particular state
28 statutory scheme regulating abortion clinics violated the Fourth and Fourteenth Amendment rights
of physicians. The five-factor test was used to determine whether the governmental interest in
obtaining information outweighed the individual's privacy interest. By contrast, the relevant
question here is whether a government entity can produce medical and mental health records of a
third-party.