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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUMBERTO MARTINEZ, et al.,
Plaintiffs,
v.
CITY OF PITTSBURG, et al.,
Defendants.

Case No. 17-cv-04246-RS (KAW)

**ORDER REGARDING JOINT
DISCOVERY LETTER**

Re: Dkt. No. 41

United States District Court
Northern District of California

On July 26, 2017, Decedent Humberto Martinez's successors in interest filed the instant wrongful death suit against Defendants City of Pittsburg, City of Pittsburg Police Chief Brian Addington, and Officers Ernesto Mejia, Jason Waite, Willie Glasper, Gabriel Palma, Jonathan Elmore, and Patrick Berhan. (Compl. ¶ 1, Dkt. No. 1.) On May 18, 2018, the parties filed a joint letter concerning Defendants' subpoenas to the Contra Costa County Sheriff and Contra Costa Regional Medical Center, seeking Decedent's arrest and medical records. (Joint Discovery Letter at 1, Dkt. No. 41.)

Having considered the papers filed by the parties, and for the reasons set forth below, the Court will allow Defendants to seek the discovery sought by the subpoenas.

I. BACKGROUND

On July 26, 2016, Defendants Mejia, Glasper, and Waite saw Decedent leave his friends' home and get into his vehicle. (Compl. ¶ 25.) The officers ran a license-plate check on Decedent's vehicle, and learned that the car's registration had expired. (Compl. ¶ 26.) Defendant Mejia initiated a traffic enforcement stop; although Defendant Mejia asserts that he activated his unmarked car's light and siren, Decedent allegedly kept driving. (Compl. ¶ 28.) The officers followed Decedent for a minute and a half before Decedent drove back to his friends' house.

1 (Compl. ¶ 30.) Decedent, who was dressed in a sleeveless t-shirt and shorts, got out of the car and
2 ran towards the house.

3 Defendants Mejia, Glasper, and Waite followed Decedent. (Compl. ¶ 31.) Defendant
4 Mejia pulled out his Taser and fired it at Decedent in probe mode, hitting him in the upper left
5 buttock. Defendants Mejia and Glasper pursued Decedent through the garage and into the kitchen,
6 where one of the officers grabbed Decedent and tackled him to the kitchen floor. (Compl. ¶¶ 31-
7 33.) Decedent ended up in a face-down, prone position with Defendant Mejia's arm around his
8 neck. (Compl. ¶ 33.) Defendant Mejia got on top of Decedent's upper half while Defendant
9 Glasper was on top of Decedent's lower half. (Compl. ¶ 34.) Defendants allegedly began beating
10 Decedent, including at least one punch to the face, three punches to the torso, elbow strikes to the
11 abdomen, and knee strikes to the torso. (Compl. ¶ 35.) Throughout this, Defendant Mejia still had
12 his arm around Decedent's neck. (Compl. ¶ 36.) Defendants Waite, Palma, Berhan, and Elmore
13 then arrived. (Compl. ¶¶ 40-41.) Defendant Palma allegedly began punching Decedent's torso,
14 Defendant Berhan repeatedly shot Decedent with a Taser in probe mode, and Defendant Elmore
15 punched and kned Decedent. (Compl. ¶¶ 41-42.)

16 Defendants Waite and Palma handcuffed Decedent. (Compl. ¶ 43.) Defendants Waite,
17 Palma, Berhan, and Elmore then allegedly put their combined weight on top of Decedent for
18 several minutes. (Compl. ¶ 43.) Decedent turned blue and became unresponsive. (Compl. ¶ 44.)
19 Decedent was taken to the hospital, where he was pronounced dead. (Compl. ¶ 44.)

20 Decedent's autopsy showed blunt force injuries to the head, neck, torso, and extremities;
21 internal soft tissue injuries; evidence of mechanical obstruction of respiration; and evidence of
22 Taser deployments. (Compl. ¶ 49.) The coroner determined that the cause of death was "Probable
23 Mechanical Obstruction of Respiration Complicated by Carotid Sinus Reflex Stipulation" lasting
24 for minutes, due to "Carotid Choke Hold Deployed During Arrest." (Compl. ¶ 50.)

25 Plaintiffs then filed the instant wrongful death suit, asserting claims under 42 U.S.C. §
26 1983, as well as for violation of California's Bane Act, negligence, and assault and battery.
27 (Compl. at 18-27.) Plaintiffs seek damages including loss of familial relationships, loss of
28 economic support, and pain and suffering. (See Compl. ¶ 57.)

1 **II. LEGAL STANDARD**

2 Under Rule 26, in a civil action, a party may obtain discovery “regarding any non-
3 privileged matter that is relevant to any party's claim or defense and proportional to the needs of
4 the case considering the importance of the issues at stake in the action, the amount in controversy,
5 the parties' relative access to relevant information, the parties' resources, the importance of the
6 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
7 outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Additionally, the court must limit the
8 frequency or extent of discovery if it determines that: “(i) the discovery sought is unreasonably
9 cumulative or duplicative, or can be obtained from some other source that is more convenient, less
10 burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to
11 obtain the information by discovery in the action; or (iii) the proposed discovery is outside the
12 scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C). Rule 45 also specifically
13 provides that “the court for the district where compliance is required must quash or modify a
14 subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person to comply
15 beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or
16 other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue
17 burden.” Fed. R. Civ. P. 45(d)(3)(A).

18 Federal Rule of Civil Procedure 45 governs discovery of non-parties by subpoena. Rule 45
19 provides, among other things, that a party may command a non-party to testify at a deposition.
20 Fed. R. Civ. P. 45(a)(1)(A)(iii). The scope of discovery through a Rule 45 subpoena is the same
21 as the scope of discovery permitted under Rule 26(b). *Beaver Cty. Employers Ret. Fund v. Tile*
22 *Shop Holdings, Inc.*, No. 3:16-mc-80062-JSC, 2016 WL 3162218, at *2 (N.D. Cal. June 7, 2016)
23 (citing Fed. R. Civ. P. 45 Advisory Comm.'s Note (1970); Fed. R. Civ. P. 34(a)).

24 **III. DISCUSSION**

25 Defendants seek to enforce two subpoenas. The first is directed at the Contra Costa
26 County Sheriff, and seeks all documents "relating to any arrests, conviction, sentencing, time in
27 custody, medical treatment in custody, terms of probation and probation violations of [Deceased]
28 from January 1, 2006 to July 26, 2016." The second is directed at the Contra Costa Regional

1 Medical Center, and seeks all documents relating to "medical history, social history, and medical
2 examinations, complaints, diagnoses, and/or treatment of [Decedent] from January 1, 2010 to July
3 26, 2016." (Discovery Letter at 1.)

4 **A. Medical Records**

5 "The test of whether Defendants should obtain access to [Decedent]'s medical records is
6 not relevance -- the records may be highly relevant -- but the test is whether the privilege has been
7 waived by putting the privileged information 'at issue.'" *EEOC v. Serramonte*, 237 F.R.D. 220,
8 224 (N.D. Cal. 2006). In other words, "privacy rights in medical records are neither fundamental
9 nor absolute. [Citations.] When a plaintiff places his medical status at issue, the expectation to
10 privacy to those conditions is diminished." *Lawrence v. City & Cty. of S.F.*, Case No. 14-cv-820-
11 MEJ, 2015 WL 1093081, at *3 (N.D. Cal. Mar. 10, 2015).

12 Here, the parties' primary dispute is whether the time period and scope of the records
13 sought is overly broad. (Discovery Letter at 2-3.) Plaintiffs argue that they have not put
14 Decedent's entire medical history at issue. (*Id.*) Defendants respond that they are entitled to the
15 medical records because Plaintiff had numerous lifelong, pre-existing health conditions that could
16 have been the cause of Decedent's death, including his high methamphetamine intoxication,
17 enlarged/pre-existing damage to his heart, and obesity. (*Id.* at 3.) Defendants also contend that
18 the medical records are relevant to determining wrongful death damages, which considers the life
19 expectancy of the deceased. (*Id.* at 4.)

20 In *Boyd v. City & County of San Francisco*, the district court held that the defendants were
21 entitled to all of the decedent's medical records in a wrongful death suit. No. C-04-5459 MMC
22 (JCS), 2006 WL 1390423, at *1, 4-5 (N.D. Cal. May 18, 2006). As an initial matter, the district
23 court found that the medical records were relevant to the wrongful death claim because "[u]nder
24 California law, medical conditions that might affect life expectancy can be considered in
25 determining wrongful death damages." *Id.* at *4; see also *Allen v. Toledo*, 109 Cal. App. 3d 415,
26 424 (1980) ("The life expectancy of the deceased is a question of fact for the jury to decide,
27 considering all relevant factors including the deceased's health, lifestyle and occupation."). The
28 district court also found that any physician-patient privilege was waived because the plaintiffs had

1 "placed those records in issue by seeking damages that may be affected by the [decedent]'s
2 medical condition. Therefore, any privilege that might exist under California law as to [the]
3 medical records has been waived." *Id.* at *5.

4 Likewise, in *Nehad v. Browder*, the district court found that the defendants were entitled to
5 the decedent's psychiatric and medical history. Case No. 15-cv-1386 WQH NLS, 2016 WL
6 1428069, at *2 (S.D. Cal. Apr. 11, 2016). The district court determined that the records sought
7 were relevant to the extent it affected his relationship with his parents, "which in turn would
8 inform the extent to which [the p]laintiffs incurred a loss of companionship and society." *Id.* By
9 putting the familial relationship at issue, the plaintiffs had waived any privilege. *Id.* at *5.

10 The Court finds that Defendants are entitled to the medical records sought. By putting
11 Decedent's cause of death, his relationships with his family, and his life expectancy at issue,
12 Plaintiffs have waived the expectation of privacy. Plaintiffs concede that Defendants are entitled
13 to medical records concerning Decedent's methamphetamine use, as well as any conditions which
14 would have shortened his life expectancy or affected his relationships with his mother and
15 children. (Discovery Letter at 3.) The Court also agrees with Defendants that any medical
16 conditions that would go to the cause of death is also at issue in this case, as Plaintiffs allege
17 Defendants' actions caused Decedent's death. (See *id.*)

18 Plaintiffs suggest that the Court should enter a First Look order for "Plaintiffs' counsel to
19 remove records that do not relate to the claims and defenses in this case, and to provide a detailed
20 privilege log for all redactions." (Discovery Letter at 5.) The Court, however, does not believe it
21 appropriate for Plaintiffs' counsel to determine what is relevant to this case and Defendants'
22 defenses.¹ Plaintiffs also suggest limiting the records to two years before Decedent's death; as
23 Defendants point out -- and Plaintiffs do not dispute -- Decedent's medical history included
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25 ¹ Plaintiffs cite to *Johnson v. Northwest Airlines, Inc.*, Case No. 08-cv-2272-VRW, 2009 U.S.
26 Dist. LEXIS 30731 (Mar. 30, 2009), in support of a first look order. (Discovery Letter at 5.)
27 Notably, in *Johnson*, the district court found that "Plaintiff's counsel has now had an opportunity
28 to perform the difficult task of filtering the discoverable from the non-discoverable, but has not
done so adequately. Given the court's lack of expertise and training in medicine, there is no reason
to believe the court would do much better." *Johnson*, 2009 U.S. Dist. LEXIS 30731, at *12. The
district court thus required that the plaintiff produce all of the disputed medical records, with the
exception of OB/GYN and dental records.

1 lifelong pre-existing conditions, and Defendants are entitled to a complete view of Decedent's
2 health.

3 **B. Criminal History**

4 Plaintiffs argue that Defendants are not entitled to Decedent's jail history to the extent it is
5 unrelated to his relationships with his mother and children. (Discovery Letter at 3.) Defendants
6 respond that his criminal history, particularly his prior drug use, is relevant to his wrongful death
7 claim. (Id. at 4.) Defendants also contend that Decedent's criminal history is relevant to the issue
8 of damages, as it affects his earnings potential and ability to provide economic support, as well as
9 his relationship with his family because "Defendants believe Decedent's lengthy criminal history
10 may show he had little or no contact from or with his family (mother and children) at various
11 times in his life." (Id. at 4-5.) Furthermore, Defendants argue that Decedent's criminal history is
12 relevant to show that Decedent may have intended to escape and resist the police to avoid
13 returning to jail due to a probation violation, which would rebut Plaintiffs' argument that Decedent
14 was not resisting arrest or trying to flee from the police. (Id. at 5.)

15 The Court agrees with Defendants that Decedent's criminal history is relevant to this case
16 beyond how it affected Decedent's relationship with his mother and children. Thus, Defendants
17 are entitled to this information. Moreover, the Court notes that to the extent Plaintiffs assert a
18 privilege exists as to Decedent's criminal history, they do not appear to identify any authority;
19 instead, their authority primarily concerns medical records. Thus, Plaintiffs have not provided a
20 reason why Defendants should not be permitted to discover this information.

21 **IV. CONCLUSION**

22 For the reasons stated above, the Court will require production of the documents requested
23 by the subpoenas in full.

24 **IT IS SO ORDERED.**

25 Dated: June 13, 2018

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KANDIS A. WESTMORE
United States Magistrate Judge