

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 17-8526-DLB

IN RE:

**APPLICATION FOR ORDER TO COLLECT,
DISCLOSE, AND USE MEDICAL RECORDS TO
CRIMINALLY INVESTIGATE DRUG AND ALCOHOL
TREATMENT PROGRAMS, LABORATORIES,
MEDICAL DIRECTORS, AND THEIR
RESPECTIVE EMPLOYEES AND AGENTS**

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SEALED ORDER

THIS MATTER has come before the Court upon the Application Under Seal filed by the United States of America, for and Order pursuant to 42 U.S.C. § 290dd-2 and 42 C.F.R. §§ 2.64 and 2.66 authorizing the collection, disclosure, and use of patient treatment records, including any confidential communications contained therein, to criminally investigate employees and agents of federally regulated and/or supported substance abuse treatment programs, specifically the following laboratories, treatment facilities, and medical directors, which are specifically identified in the attached Exhibit 1.

The Court finds that the Applicant has shown good cause for the issuance of the Order, specifically that there is cause to believe that employees or agents of the programs are engaged in criminal misconduct that is extremely serious, other ways of obtaining evidence of this criminal activity are not available or would not be effective, and the public interest and need for the collection, disclosure, and use of these records outweigh the potential injury to patients of the programs, physician-patient relationships, and the treatment services.

The Court further finds and orders as follows:

1. The investigation being conducted by the investigative team, which is defined to include agents, employees, and task force officers of the Federal Bureau of Investigation, agents and employees of the Internal Revenue Service, Department of Labor, Amtrak Office of Inspector General, Office of Personnel Management Office of Inspector General, prosecutors from the U.S. Attorney's Office, and the U.S. Department of Justice, is within the lawful jurisdiction of the government authority seeking access to the records, as provided in 42 C.F.R. § 2.64(a)(1);

2. There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.

3. The application and order do not refer to any patient by name and do not contain or otherwise disclose any patient identifying information, as provided in 42 C.F.R. § 2.66(a)(2).

4. Good cause exists for this Order in that: (a) there are no other effective ways of obtaining the information sought, as provided in 42 C.F.R. § 2.64(d)(1); and, (b) the public interest and need for disclosure of the records outweigh the potential injury to the patient/client, the physician-patient relationship, and to the treatment services, as provided in 42 C.F.R. § 2.64(d)(2).

5. The criminal activity alleged to have been committed includes "extremely serious crimes," as provided in 42 C.F.R. § 2.63(a)(2), due to the extreme vulnerability of the patient population, as evidenced by receiving bills for services not rendered as well as exorbitant medical bills for basic urinalysis ("UA") testing.

6. The investigative team properly may collect patient treatment records through legal process, and may use and disclose all such records during its investigation and prosecution, including any confidential communication contained therein, pursuant to the terms set forth below.

7. As provided in 42 C.F.R. § 2.64(e)(1), disclosure shall be limited to parts of the patient/client records regarding (1) prescriptions for drug testing; (2) claims data, billing information, and payments for reimbursement for drug testing; (3) how results of drug testing were or were not used in directing the patient's treatment; (4) insurance claims and reimbursements, to include all documentation and information on which the specifically named laboratories, medical directors, and addiction treatment facilities (hereinafter referred to as the "TARGETS") relied to support their requests for insurance reimbursements, including documentation and information on which the TARGETS relied to support their requests for insurance reimbursements, including documentation to establish that billed services were rendered and medically necessary; (5) payments made to or received from patients, sober home residents, sober home owners, and/or owners of other drug treatment facilities; (6) how patients paid for services or were paid for work at the TARGETS; (7) special investigations units ("SIU") documentation and audit information; and (8) patient relapses, overdoses, or calls for emergency or police services at the physical locations of the TARGETS. If other information has been or, in the future, is voluntarily disclosed to the investigative team, they may retain it subject to the protections set forth herein.

8. As provided in 42 C.F.R. § 2.64(e)(2), access to the records shall be limited to members of the investigative team, including agents, analysts, auditors, experts and consultants, and to consultants, auditors, or experts who may be retained to evaluate the evidence for the purposes of trial; to members of the grand jury; and to persons interviewed during the course of the investigation and witnesses who may be called to testify at administrative

9. As provided in 42 C.F.R. § 2.66(d)(1), the investigative team shall redact all client identification information (as defined by 42 C.F.R. § 2.11), if records are disclosed to individuals

not authorized under the order to view such information (except that they may be disclosed to the court in camera should the court need it in furthering the disposition of the case).

10. Prior to the disclosure of such patient identifying information in a court proceeding, the U.S. Attorney's Office shall file an appropriate motion to seal that information from the public scrutiny pursuant to 42 C.F.R. § 2.67(d)(4). If the U.S. Attorney's Office needs to disclose as discovery any information collected pursuant to this Order, it shall apply for and obtain a Protective Order.

11. As provided in 42 C.F.R. §§ 2.66(c), (d)(1) and 2.64(e)(3), the investigative team shall refrain from using any information obtained pursuant to this Order to conduct any investigation or prosecution of a patient/client, or as the basis for an application for an order under 42 C.F.R. § 2.65.

12. As provided in 42 C.F.R. § 2.66(b), notice of the Application and this Order are not required at this time. After the grand jury returns an indictment, the targets of the investigation are arrested, and discovery is ordered produced, the U.S. Attorney's Office shall produce its Application and the Court's Order to the charged individuals, and to the persons and entities from whom the records were obtained to allow them an opportunity to seek revocation or amendment of this Order as provided in § 2.66(b). The U.S. Attorney's Office also shall send a letter to all patients identified in the patient treatment records at the address shown in the records. The letter shall inform the patients of the Court's Order and their ability to seek revocation or amendment of this Order appropriately limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the Order as provided § 2.66(b).

13. The Application and this Court's Order shall be SEALED until further Order of this Court, except that:

a. copies shall be provided to the U.S. Attorney's Office and law enforcement as necessary to the performance of their official duties;

b. pursuant to 42 C.F.R. § 2.61(a), a copy of this Order may be served alongside legal process (e.g., grand jury subpoena, search warrant, FBI Request for Information) to obtain patient treatment records as authorized herein. Any person or entity provided with a copy of this Order shall be informed that this Order is Sealed and may not be further disclosed without permission of the Court; and

c. when serving a copy of this order as described above in paragraph 13.b, Exhibit 1, which identifies each specific entity, may be redacted to reflect only the specific entities for which information is being sought.

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 12th day of December, 2017.


HON. DAVE LEE BRANNON
UNITED STATES MAGISTRATE JUDGE

Copy furnished:

Alexandra Chase, AUSA
A. Marie Villafañá, AUSA
John Gerrity, FBI

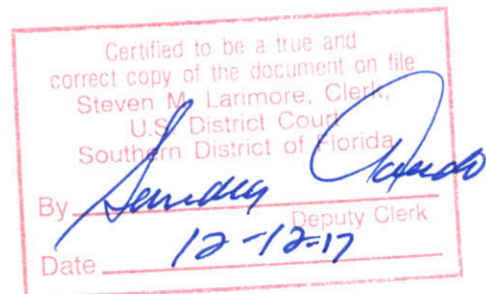


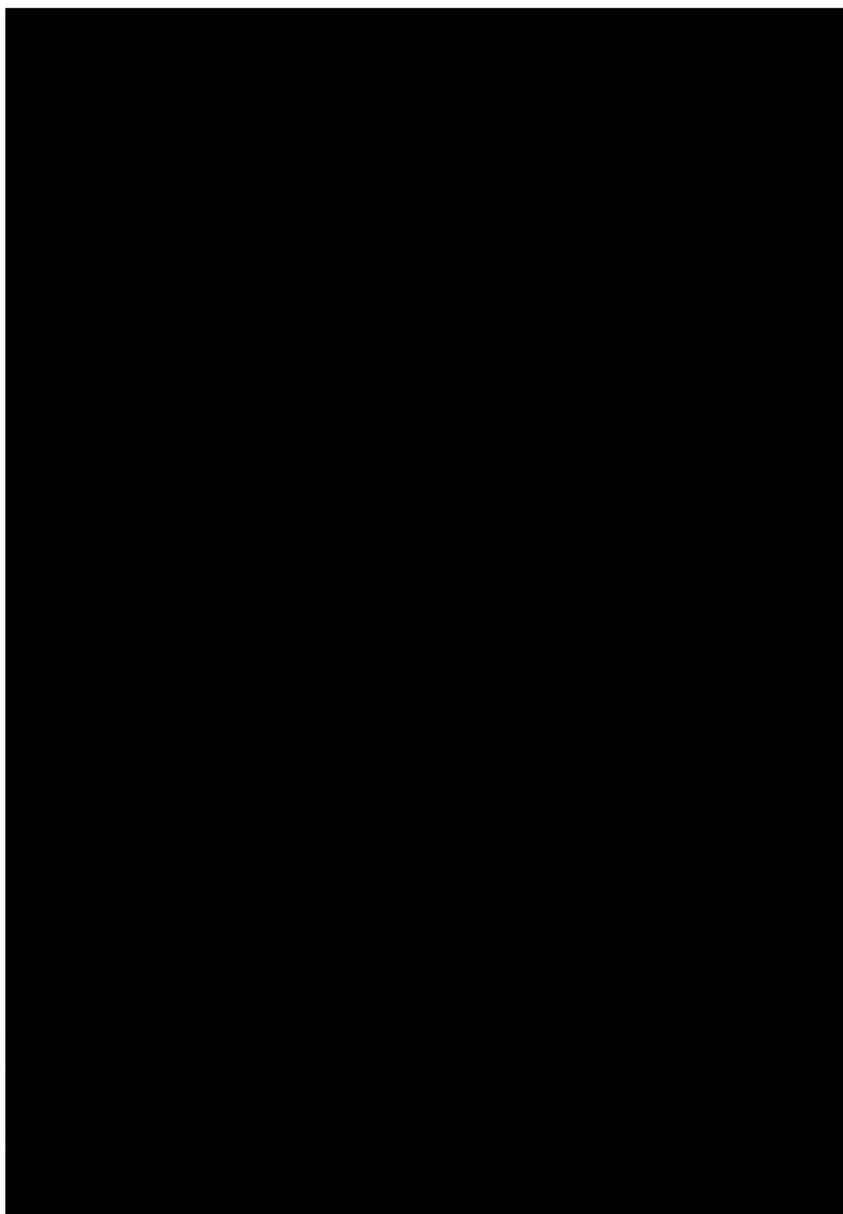
Exhibit 1

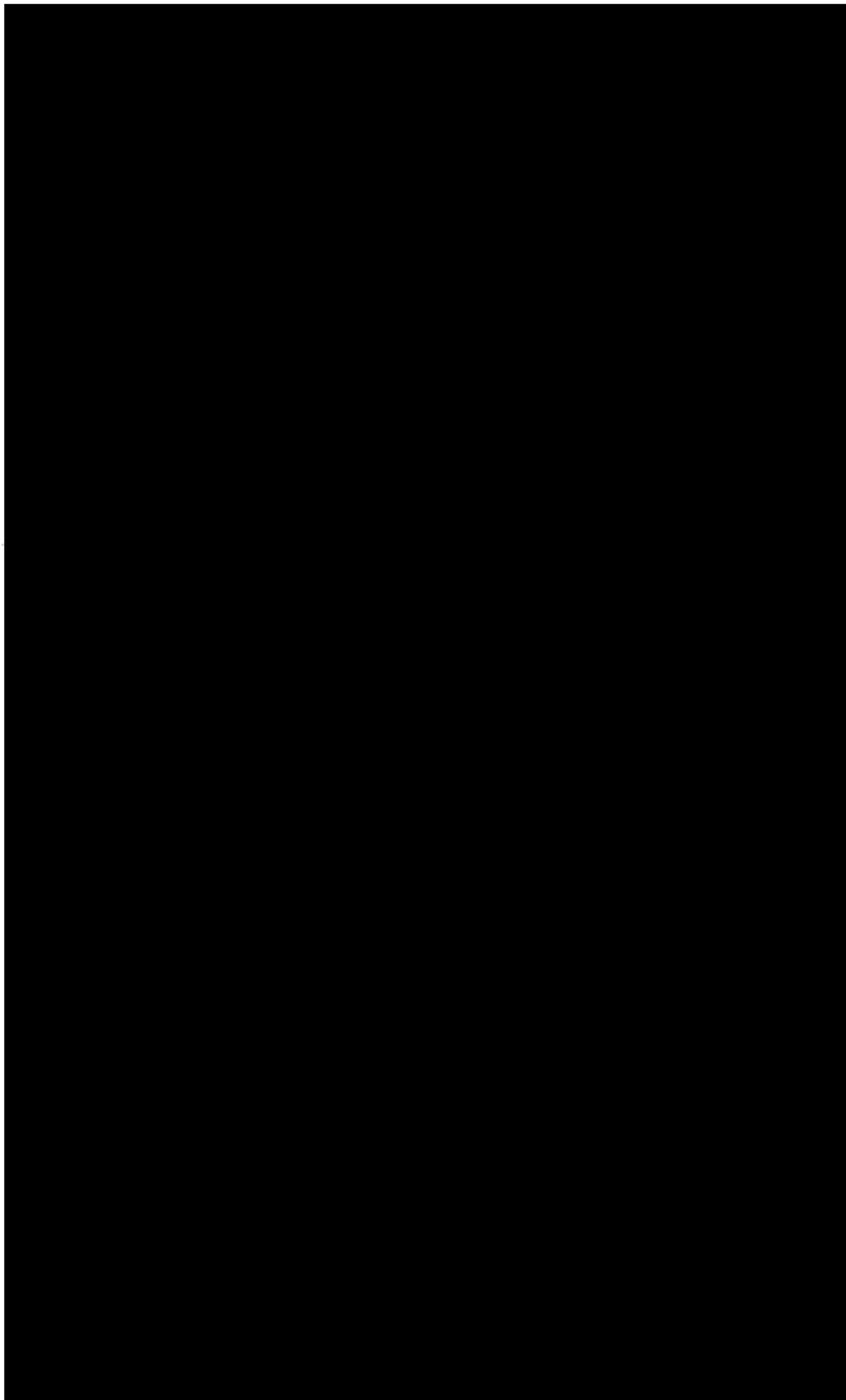
This Title 42 Application is for a variety of different entities and organizations. As detailed in the Affidavit, there are three different classes of entities related to fraudulent activity by drug and alcohol treatment facilities: laboratories, medical directors, and treatment facilities.

The entities all operate in conduct that is similar within the addiction treatment industry. Below are explanations of how the entity operates and a list of entities.

Laboratories

The following laboratories engage in the bodily fluid testing of addiction treatment patients. These laboratories partner with treatment facilities and medical directors who sign off on standing orders for bodily fluid testing of insured patients. In exchange for the patient bodily fluids, the laboratories often pay kickbacks or commissions, which are derived from the patients' insurance proceeds, to various individuals and entities associated with the collection of the bodily fluids.







Medical Directors

Medical directors, specifically medical and osteopathic doctors, are a key piece in the treatment of addiction patients. Medical directors are responsible for monitoring the progress and well-being of the patient throughout the treatment process. Medical directors must tailor treatment to the patient and carefully review any statistical data related to the patient, be it treatment notes or urinalysis testing. For laboratories and treatment facilities engaging in the kickback scheme for patient bodily fluid, a medical director's signature is the key to allowing billing of the patients' insurance to take place. The medical directors listed below are known to have been involved with treatment facilities and have signed laboratory standing orders for entities involved in the kickback scheme. While these medical directors sign standing orders, they often fail to review the test results and utilize the results in guiding the patients' treatment.





Treatment Facilities

The following treatment facilities are known to engage in the bodily fluid testing kickback scheme referenced above. Treatment facilities are tasked with the day to day therapy and treatment of a recovering addict. These facilities are known to order excessive and duplicative testing of patient bodily fluids in exchange for a portion of the patients' insurance proceeds from laboratories.

