

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
THE STATE)
)
vs.)
)
FRANCISCO LOBOS LOBOS,)
)
Defendant.)
)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
WARRANTS #: 2024A2330206283, -6285, -6286
ORDER

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JAY GREENING CDD CLK SC
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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
THE STATE)
)
vs.)
)
EMILY LANESHA JOCQUISHA)
)
DAWKINS,)
)
Defendant.)
)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
WARRANTS #: 20222351034126;
20222351034128; 2024-GS-23-07112A; 2024-
GS-23-07113A

ORDER
RECEIVED
May 19 2025
SC Court of Appeals

Introduction

This order addresses two motions to compel the production of medical documents pursuant to two criminal investigations involving felony DUI charges, filed by the Thirteenth Judicial Circuit Solicitor's Office. The motions were heard on Friday, April 4, 2025. Following the conclusion of the hearing, this Court was informed via email that the parties were attempting to engineer a solution to this issue, with the State's email noting in pertinent part:

Respectfully, the State and Prisma Health would jointly ask the Court to refrain from issuing any ruling on the Motions prior to next Thursday, April 10, 2025. We are hopeful that we will be able to reach an agreement and enter into a Consent Order that would resolve the pending motions and satisfy the concerns both sides raised during today's hearing.

This Court then received a follow-up email from the Solicitor's Office on Wednesday, April 10, 2025 stating that the parties were unable to reach an agreement:

A Certified Copy
Clerk of Court C.P. & G.S. & Family Court

MAY 13 2025

J. S. Young
Greenville County, SC

... the parties have met and have tried very hard to solve the various issues in this case but have been unsuccessful. We therefore request that you issue your ruling and if you need anything from the parties please let us know.

The Court has considered the arguments by the State and Prisma Health, as well as the submissions made by both parties, and issues this order.

BACKGROUND

On January 3, 2025, the State served Prisma Health [hereinafter “Prisma Health” or “Prisma”] with a copy of the Records Order issued by the Greenville County Circuit Court. By letter dated January 13, 2025, Prisma Health corresponded with the Solicitor’s Office and stated that it was unable to comply with the Court’s Orders because of a recently enacted federal rule The HIPAA Privacy Rule To Support Reproductive Health Care Privacy 89 FR 32976, now requires the State provide an “attestation” that the records Prisma Health was ordered to produce “would not be used to investigate or impose liability for “seeking, obtaining, providing, or facilitating reproductive healthcare.”

As a preliminary matter, the State argues the prohibition regarding disclosing health information regarding reproductive health care and need for attestation applies only “where the relevant activity is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care...” 45 C.F.R. § 16-L502(a)(5)(iii)(B).

No reference was made to any activity regarding reproductive health care in the State’s request for documents, nor has Prisma Health represented that any of the records sought include activity connected to reproductive healthcare. Despite the fact that the Court’s Orders stated the records sought “were related to medical treatment obtained by the victims following a motor vehicle collision related to a Defendant driving under the influence”, Prisma failed to comply with the Orders and produce the requested medical documents.

Because the Court Orders do not command the production of medical records regarding activity in connection with any person seeking, obtaining, providing, or facilitating reproductive health care, the rule prohibiting their production does not apply according to the State. Hence, the State argues the medical records should have been produced according to the Court orders.

Conversely, Prisma Health asserts that it cannot produce the requested records as it had in the past without violating federal law.

According to the affidavit of Michael Barrieau, Prisma Health Manager of Release of Information (ROI), Prisma Health cannot currently comply with a court order or subpoena, despite limiting the request for non-reproductive health for the reasons set forth below:

1. Prisma Health is the largest health care organization in South Carolina with 18 acute care and specialty hospitals, 433 physician and other practice sites, and numerous outpatient facilities, providing a full complement of health care services.
2. Prisma Health only employs Mr. Barrieau and one full time employee in its ROI Department.
3. Prisma Health contracts with Datavant (formerly known as Ciox), a third-party vendor, to assist with responding to requests for patient medical records. System wide, Datavant processed approximately 461,000 medical records requests between March 2024 and February 2025 for Prisma.
4. Datavant does not provide a breakdown of the number of records requests Prisma receives from law enforcement officials. However, between March 2024 and February 2025, Datavant processed an average of 102 subpoena requests per month, which resulted in an average monthly production of 3,643 pages of medical records in response to subpoenas alone.

5. HIPAA regulations presently require that Prisma Health receive certain attestations before it can disclose patient protected health information ("PHI") that is *potentially* related to reproductive health.
6. HIPAA regulations define reproductive health care very broadly to include health care that affects the health of an individual in all matters relating to the reproductive system and its functions and processes. This definition could include any number of diagnoses and treatments from infertility treatment, birth control, hormone replacement therapy, endometriosis treatment, and labor and delivery, to name but a few.
7. Furthermore, the HIPAA definition of reproductive health care could apply to every gender, and PHI potentially related to reproductive health care could be included anywhere within a patient's medical record from clinical notes regarding a particular patient visit to information provided by the patient regarding his/her medical history. PHI potentially related to reproductive health care could also be contained within medical records received by Prisma from another provider on behalf of the patient in conjunction with the patient's care and treatment at Prisma or by a Prisma provider.
8. Prisma cannot disclose PHI that is potentially related to reproductive health care unless it obtains a valid attestation that complies with the requirements set forth in the HIPAA regulations. The HIPAA regulations require, among other things, that the person requesting the PHI attest that the information will not be used to investigate or impose liability on a person for merely seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purpose.
9. The attestation must meet all of requirements set forth in the HIPAA regulations and cannot be combined with any other document. If Prisma relies upon an attestation that is

defective (i.e., does not comply with the regulatory requirements) and releases PHI, Prisma is not in compliance with its obligations under HIPAA and may be subject to substantial civil monetary penalties imposed by the United States Department of Health and Human Services' ("DHHS") Office for Civil Rights.

10. Datavant does not perform a substantive review of a patient's medical records when fulfilling a medical records request. Datavant determines whether the request complies with applicable law and, if so, locates and produces the records.

11. Datavant will not perform any review of a patient's medical records to determine whether there are records potentially related to reproductive health care nor will it determine whether production of such records in the absence of a signed, model attestation form is in compliance with the law; therefore, Datavant will only produce PHI that may contain reproductive health care information if a properly executed attestation is provided.

12. If an attestation is not provided with a subpoena, warrant, order, or other form of process from a law enforcement official or court of law, Prisma would be required to individually review the requested medical records, which could contain thousands of pages of documents generated by Prisma, as well as records generated by other providers in South Carolina and other States that Prisma has received on behalf of the patient in connection with the patient's treatment.

13. Prisma's ROI Department does not have the resources to review what could equate to thousands of pages of medical records each month, and Prisma would be required to hire registered nurses or other persons with the requisite clinical knowledge to review the records to determine whether the medical records contain PHI that is potentially related to reproductive health care.

14. If records potentially related to reproductive healthcare were identified, Prisma would have to determine whether the records could be lawfully produced in compliance with HIPAA regulations. Consequently, the records would have to undergo a second review by Prisma's legal counsel. Complying with a subpoena, court order, or warrant in a timely manner would be virtually impossible under these circumstances and would require significant resources.

15. With an attestation, Prisma and its business associate, Datavant, would be able to immediately ascertain the purpose of a records request or order and to know whether more detailed review of the records is required to determine whether HIPAA prohibits or permits disclosure.

16. Prisma's failure to comply with HIPAA regulations, including the regulations requiring a written attestation prior to disclosure of PHI potentially related to reproductive health care, could result in substantial civil monetary penalties and/or expose Prisma to legal actions by patients for violations of privacy rights.

Facts

I. State v. Lobo Lobos

This case arose from a motor vehicle accident that occurred on July 4, 2024, in which four victims were injured. Defendant Francisco Lobos was charged with two counts of Felony Driving Under the Influence and one count of Driving Without a License. The State sought to procure medical records from Prisma Health as part of its ongoing prosecution of the Defendant ("Defendant Order"). The State also seeks medical records of the four victims ("Victim Order").

The Defendant Order was executed on January 2, 2025, by the Circuit Court of Greenville County, Judge G. D. Morgan, Jr. The Victim Order was executed by the Circuit Court Judge Morgan of Greenville County, on January 8, 2025.

The State served the Defendant Order upon Prisma Health on January 3, 2025, and served the Victim Order upon Prisma Health on January 9, 2025.

These orders contained, in pertinent part, a line noting that these medical records would “be used only for the purpose of investigation and prosecution of the above styled action, and for no other purpose”. One victim (ABL), whose medical records were requested was three years old at the time of the accident. The other victims were 12, 15, and 18 years of age.

Prisma Health responded by letter on January 13, 2025, regarding the Defendant Order, and on January 17, 2025, regarding the Victim Order. Each response indicated Prisma Health was unable to comply with the request to produce medical records due to a new federal rule enacted under the Health Insurance Portability and Accountability Act (“HIPAA”) and the Privacy Rule to Support Reproductive Health Care Privacy, 45 CFR § 164.502(9)(5)(iii) (“the Attestation Requirement”).

Prisma’s response indicated the State’s request for these medical records was fatally deficient because it did not include a separate written statement indicating that the requested records would “not [be used] for a purpose prohibited under § 164.502(a)(5)(iii)” as mandated by the Attestation Requirement. *Id.*

As a result of Prisma Health’s adamant refusal to produce these records as specified in the Court’s orders, the State filed a Motion to Compel in both matters on March 13, 2025.

II. State v. Dawkins

This case arose from a motor vehicle accident that occurred on May 23, 2022, in which one victim, Beverly Estes, sustained injuries resulting in her death. Defendant Dawkins was charged with Felony Driving Under the Influence Resulting in Death, Felony Driving Under the Influence Resulting in Great Bodily Injury, Habitual Offender Causing Death, and Habitual Offender Causing Great Bodily Injury.

The State sought to procure medical records from Prisma Health for Beverly Estes, the deceased victim (“the Deceased Victim Order”), who was 66 years-old at the time of death, as part of its ongoing prosecution.

The Deceased Victim Order was executed on January 9, 2025 by the Circuit Court of Greenville County, Judge G.D. Morgan, Jr. This order contained, in pertinent part, a section noting that the medical records would “be used only for the purpose of investigation and prosecution of the above styled action, and for no other purpose”. The State served the Deceased Victim Order upon Prisma Health on January 13, 2025.

Prisma Health responded to this request by letter on January 13, 2025, and again indicated it was unable to comply with the State’s request and the Court’s order compelling the production of the medical records. Prisma responded that the State’s request for the medical records was fatally deficient because it did not include a separate written statement indicating that the requested records would “not [be used] for a purpose prohibited under § 164.502(a)(5)(iii)” as required by the Attestation Requirement 45CFR § 164.502(a)(5)(iii).

As a result of Prisma Health’s failure to produce these records as specified in the Court’s orders, the State filed a Motion to Compel on March 13, 2025.

Court Orders

In summary, in January, 2025, Prisma was served with the following executed Circuit Court orders promulgated by Judge Morgan:

- Dawkins Victim Order - January 9, 2025 order to produce all medical records for a female (DOB 11/30/1955) allegedly killed as a result of injuries sustained in a car accident caused by the Defendant Dawkins, while driving under the influence. The period covered is May 23, 2022 (the date of the accident) up to and including the date of the release of the individual from the Prisma Health system to present.
- Lobos Victims Order - January 8, 2025 order to produce all medical records for the four alleged victims of the Defendant Lobos to include a female (DOB 7/13/2008), a male (DOB 5/23/2020), a female (DOB 11/1/2006) and a female (DOB 2/16/2011). The period covered is July 4, 2024 (the date of the accident) up to and including the date of the release of the individuals from the Prisma Health system to present.
- Lobos Defendant Order - January 2, 2025 order to produce all medical records for the Defendant Lobos, a male (DOB 12/27/1993), who allegedly was driving under the influence and caused an accident that inflicted great bodily harm to the victims. The period covered is July 4, 2024 (the date of the accident) up to and including the date of the release of the individual from the Prisma Health System to present.

Each of the above orders contain a directive that the documents produced “be used only for the purpose of the investigation and prosecution of the above styled action, and for no other purpose.”

In response to the orders and the accompanying requests for medical records, Prisma Health notified the State that no records could be produced “at this time” because the required Reproductive Health Attestation was not provided with the court’s orders. Prisma’s response included the model form of Attestation developed and sanctioned by the United States Department of Health and Human Services (DHHS) as being HIPAA compliant.

After multiple conferences with Prisma to resolve these issues, the State declined to

execute and submit the Attestations, and instead filed Motions to Compel on March 13, 2025.

The State's Legal Arguments

The State argues that the 2024 Privacy Rule requirement for an Attestation (the "Attestation Requirement") does not apply to the Dawkins Victim Order and the Lobos Defendant and Victim Orders because (a) the Orders do not mention reproductive health care; (b) the Orders limit the use of the documents produced to "the investigation and prosecution" of the case and "for no other purpose"; (c) the Orders suggest that the requested records relate only to medical treatment following the car accidents involving the persons whose records were requested; (d) South Carolina law does not allow prosecution of a woman who procures or attempts to procure an abortion and, therefore, the requested records could not be used to prosecute any of the female victims for that crime; and (e) the Dawkins Victim Order seeks the records of a deceased person, who obviously cannot be prosecuted for any crime.

Prisma Health's Legal Arguments

Prisma Health asserts that the production of medical records in these matters is governed exclusively by federal law. *45 C.F.R. §160 to 164*. Specifically, The Privacy Rule generally prohibits Prisma Health from using or disclosing protected personal health information without the patient's authorization "[e]xcept as otherwise permitted or required by this subchapter." *45 C.F.R. §164.508*.

Prisma Health's arguments regarding the exclusive applicability of federal law is discussed in greater detail below.

A. HIPAA Privacy Rule Requirements

The Privacy Rule establishes national standards for the protection of the individually identifiable health information of a patient. Consequently, every health care provider who

electronically transmits health information in connection with certain transactions is a “covered entity” bound by the requirements of HIPAA and the Privacy Rule. *45 C.F.R. §§ 160.102 and 160.103*. State laws that are contrary to HIPAA and the Privacy Rule are preempted by the federal requirements, unless they provide more stringent protection for patient information. *45 C.F.R. §160.203*. Prisma Health is a “covered entity” bound by the requirements of HIPAA and the Privacy Rule.⁴

Under the law, a covered entity may not use or disclose PHI, except (a) as required or permitted by the Privacy Rule; or (b) as authorized in writing by the individual (or the individual’s personal representative) who is the subject of the information. *45 C.F.R. § 164.502(a)*. The Privacy Rule *requires* the disclosure of PHI in only two instances - when the information is being disclosed to the patient (or the patient’s designated representative) upon request or authorization of the patient and when the information is being disclosed to the United States Department of Health and Human Services (“DHHS”) in connection with a compliance investigation or enforcement action.

All other disclosures allowed by the Privacy Rule are either permitted, *but not required*, or are prohibited. *45 C.F.R. § 164.502(a)(2) and (4)*. For example, the Privacy Rule permits, but does not require, a provider to disclose PHI to comply with a court order, but such disclosures must be limited to the PHI expressly authorized by the order. This permitted disclosure is an exception to the requirement that a patient authorization be obtained prior to the disclosure of PHI. *See 45 C.F.R. §§ 164.512(a) and (e)(1)(i)*.

Thus, prior to the issuance of the new 2024 Privacy Rule, Prisma Health would have been permitted, but was not required, to disclose the records sought by the State upon presentation of a court order in these cases. Therefore, under Prisma’s previous policy of cooperating with law

enforcement, Prisma would have to disclosed the medical records under this permitted exception. However, the new 2024 Privacy Rule modified this straightforward and balanced process for the permissive production of records for use in judicial proceedings. *89 Fed. Reg. 32976 (April 26, 2024)*.

B. 2024 Privacy Rule

Under the new 2024 Privacy Rule, a covered entity, such as Prisma Health, is prohibited from disclosing PHI, which is to be used:

- To conduct a ***criminal, civil, or administrative*** investigation into any person for the mere act of seeking, obtaining, ***providing, or facilitating*** reproductive health care;
- To impose ***criminal, civil, or administrative*** liability on any person for the mere act of seeking, obtaining, ***providing, or facilitating*** reproductive health care; or
- To *identify any person for any purpose described above.*

45 C.F.R. §164.502(a)(5)(iii)(A) (emphasis added). See also, 89 Fed. Reg. 32976 The phrase “seeking, obtaining, providing, or facilitating reproductive health care” includes, but is not limited to “***expressing interest in, using, performing, furnishing, paying for, disseminating information about, arranging,*** insuring, administering, authorizing, providing coverage for, approving, ***counseling about, assisting,*** or otherwise taking action to engage in reproductive health care; or attempting any of the same.” *45 C.F.R. §164.502(a)(5)(iii)(D)(emphasis added).*

According to Prisma, the conduct protected involves much more than a woman seeking and/or obtaining an abortion, for which no criminal liability applies. Prisma asserts that PHI implicates male and female relatives, spouses, partners, friends and healthcare workers, such as physicians or other clinical or counseling staff, who could be “identified” by review of a patient’s records.

C. Reproductive Health Care

As noted above, the 2024 Privacy Rule applies only to the category of care designated “Reproductive Health Care,” which is broadly defined as “health care [as defined in the Privacy Rule] that affects the health of an individual **in all matters** relating to the reproductive system and to its functions and processes.” 45 C.F.R. §160.103 (*emphasis added*).

“Health care” includes “preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body” and the “sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.” *Id.*

In issuing the 2024 Privacy Rule, the Department clarified the intended breadth of the term “reproductive health care” by providing a “non-exclusive list of examples that fit within the definition: *contraception*, including emergency contraception; *preconception screening and counseling*; management of pregnancy and pregnancy-related conditions, including pregnancy screening, prenatal care, miscarriage management, treatment for preeclampsia, hypertension during pregnancy, gestational diabetes, molar or ectopic pregnancy, and pregnancy termination; *fertility and infertility diagnosis and treatment*, including assisted reproductive technology and its components (*e.g.*, in vitro fertilization (*IVF*)); diagnosis and treatment of conditions that affect the reproductive system (*e.g.*, *perimenopause*, *menopause*, endometriosis, adenomyosis); and other types of care, services, and supplies used for the diagnosis and treatment of conditions related to the reproductive system (*e.g.*, *mammography*, pregnancy related nutrition services, postpartum care products).” 89 Fed. Reg. 33006 (*emphasis added*).

The applicability of the 2024 Privacy Rule is intentionally overly broad and covers health

information on a wide spectrum of conditions, which means that many patient records can potentially contain reproductive health information, regardless of the patient's age or, in some cases, gender, for example, menopause treatment likely involves women outside of the childbearing age and fertility screening and counseling could involve both male and female patients.

D. Attestation Requirement

In defense of its failure to release the requested medical records as ordered by the Circuit Court in the two cases above, Prisma Health relies upon the Attestation Requirement contained within the updated HIPAA Privacy Rule to Support Reproductive Health Care Privacy, ("the Privacy Rule"). The Privacy Rule took effect on June 25, 2024. Compliance was required by December 23, 2024.

The new Privacy Rule was promulgated by the Department of Health and Human Services (DHHS) in response to the "changing legal landscape" occurring after the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* (597 U.S. 215, 142 S. Ct. 2228 (2022)) and appears to be designed to more closely protect Personal Health Information ("PHI") related to reproductive health and individuals' choices in this respect.

In its executive summary included in the Privacy Rule, the Department includes the following language explaining its rationale:

The threat that PHI will be disclosed and used to conduct such an investigation against, or to impose liability upon, an individual or another person is likely to chill an individual's willingness to seek lawful health care treatment or to provide full information to their health care providers when obtaining that treatment, and on the willingness of health care providers to provide such care.

89 Fed. Reg. 32976. The Privacy Rule contains a multitude of new requirements and safeguards, all aimed at safeguarding PHI related to reproductive health. In to the cases currently under this Court's consideration, the Privacy Rule contains an Attestation Requirement, found

under § 164.509, Uses and Disclosures for Which an Attestation is Required. Subsection (a)(1)

indicates that:

A covered entity or business associate may not use or disclose protected health information potentially related to reproductive health care for purposes specified in § 164.512(d), (e), (f), or (g)(1), without obtaining an attestation that is valid under paragraph (b)(1) of this section from the person requesting the use or disclosure and complying with all applicable conditions of this part.

45 CFR 164.509.

In this case, it is undisputed that Prisma Health is a covered entity and is thus subject to HIPAA and to the Attestation Requirement. Section (c)(1) sets forth specific elements that must be contained within the attestation in order for it to be valid, including:

- (i) A description of the information requested that identifies the information in a specific fashion, including one of the following:
 - (A) The name of any individual(s) whose protected health information is sought, if practicable.
 - (B) If including the name(s) of any individual(s) whose protected health information is sought is not practicable, a description of the class of individuals whose protected health information is sought.
- (ii) The name or other specific identification of the person(s), or class of persons, who are requested to make the use or disclosure.
- (iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity is to make the requested use or disclosure.
- (iv) A clear statement that the use or disclosure is not for a purpose prohibited under § 164.502(a)(5)(iii).
- (v) A statement that a person may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if that person knowingly and in violation of HIPAA obtains individually identifiable health information relating to an individual or discloses individually identifiable health information to another person.
- (vi) Signature of the person requesting the protected health information, which may be an electronic signature, and date. If the attestation is signed by a representative of the person requesting the information, a description of such representative's authority to act for the person must also be provided.

Significantly, Section (b)(3) also requires that this attestation be a fully self-standing document and prevents the attestation from being a part of any other documents. In response to the State's request for medical records as discussed *supra*, Prisma Health's response indicated that the Attestation Requirement was not fulfilled.

Chiefly, that the inclusion of a line noting that these medical records would "be used only for the purpose of investigation and prosecution of the above styled action, and for no other purpose" within the Court's order violated the prohibition against a compound attestation under (b)(3), and that this statement did not rise to the level of the requirement under (c)(1)(iv) of a "clear statement that the use or disclosure is not for a purpose prohibited under § 164.502(a)(5)(iii)". Hence, the use of a State Court order was not in compliance with the new Privacy Rule according to Prisma.

Legal Issues

- 1) Does the Court have jurisdiction over this matter?
- 2) Does the State's request for medical records pursuant to a State Court Order violate privacy concerns expressed after the *Dobbs* decision?
- 3) Should Prisma Health be compelled to produce medical records?

Based upon a review of the evidence, memoranda and arguments of counsel, the following findings of fact are made.

Findings of Fact

1. The Circuit Court Orders in the Dawkins and Lobos matters in which medical records were ordered to be produced, absent any protected health information (PHI), were not appealed nor removed to federal court. Thus, this Court has subject matter jurisdiction over these matters.
2. Prisma Health did not file a motion of reconsideration of the Court orders and failed to appeal such. Prisma Health simply chose to ignore the Court's orders rather than produce the requested medical documents; proceed with a removal to federal court; or appeal the matter to the State's Appellate Court. This inaction restricts the judicial process or avenue to address the State's request for these documents to this Court.
3. After Prisma Health refused to disclose or produce the requested medical documents, the State filed a motion to compel the production of medical documents. The parties appeared pursuant to the jurisdiction of this Court and argued their respective legal positions on the production of the requested medical records, despite two prior Court orders.¹
4. The two prior Circuit Court orders in the matters do not violate the privacy concerns as argued by Prisma. The 2000 Privacy Rule enacted before the *Dobbs* decision was balanced to protect an individual's privacy while allowing important law enforcement functions to proceed in the interest of public safety. Accordingly, disclosures to law enforcement or the courts were previously subject to a minimum necessary determination by covered entities. Therefore, when reasonable to do so, the covered entity could rely upon the representations of the law enforcement official or public officer or a court order as to what information is the minimum necessary for their lawful purposes. 45 C.F.R. 64.514(d). The 2024 Privacy Rule imposes new stringent requirements that permits the covered entity to ignore a court order if the covered

¹ Immediately following the hearing, the parties asked this Court to hold off on issuing its opinion, as the parties were working on a solution. The parties were ultimately unable to reach an agreement, and this order followed.

entity or Prisma Health concludes that an attestation is not sufficient or an attestation has not been submitted.

5. In the Dawkins matter, Prisma Health refused to disclose the medical documents regarding the victim's bodily injuries which resulted in her death. The victim was 67 years of age at the time of the accident. The Court recognizes the federal regulations impose a 50-year limitation on releasing information regarding protected health information after a patient's death. Again, conventional wisdom would indicate that the public interest and the safety of the public in determining the cause of death of the victim must be fairly balanced with the privacy concerns of the deceased.
6. In the State of South Carolina, women who have procured the performance of an abortion or the attempted performance of an abortion cannot face prosecution. *S.C. Code §44-41-80 (2025)*. Women who obtain abortions are immune from any civil or criminal penalty. *S.C. Code §44-41-670 (2025)*. The Court's prior orders specifically stated that the records can only be used for this prosecution, so the records would be inadmissible and cannot be used in any other investigation, prosecution, or other court proceeding. Therefore, even if the records contained some material that touched on "reproductive health care," the records could not be used in any other matter, and the person who receives such services would be immune from civil or criminal liability.
7. The 2024 Privacy Rule specifically addresses reproductive health care with respect to abortion and gender transition. *89 Fed. Reg. at 32,989 n.163 and 33,005*. Moreover, the 2024 Privacy Rule requires public officials requesting PHI to swear the request is not being made for purposes prohibited by the 2024 Privacy Rule. Accordingly, public officials must provide an attestation that the request is not to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health that DHHS

deems lawful. 45 C.F.R. §§164.502(a)(5)(iii)(A) and 164.509(a). Again, the Court's orders emphatically state the documents are to be used "only for the purpose of the investigation" regarding driving under the influence charges resulting in bodily injuries and death. The Court's language limiting the use of the records is precisely the same as the attestation. In fact, the Court's orders have greater authority and control over the State in the event those records were used for purposes other than the criminal prosecution with regard to potential sanctions and punishments.

8. The 2024 Privacy Rule threatens state officials with federal criminal charges should they send a noncomplying attestation or if DHHS deems the attestation to have been submitted "for purpose prohibited" by the 2024 Privacy Rule. 45 C.F.R. §164.509(c)(1)(iv & v).
9. Prisma Health argues that PHI potentially related to reproductive health care can be included anywhere within a patient's medical records, from clinical notes regarding a particular patient visit to information provided by the patient regarding his/her medical history. Because of the breadth and scope of the term "reproductive health" and the vast numbers of medical records that could contain PHI potentially to reproductive health care, Prisma Health declined to produce the requested medical records without a valid attestation and because of the cost associated with producing documents absent PHI. *See Barrieau Affidavit, items 13-16, pp. 5-6 of this Order.*
10. Prisma Health and its records vendor have determined that, given the breadth and scope of the term "reproductive health care" and the vast numbers of medical records that could contain PHI potentially related to reproductive health care, Prisma Health will not produce medical records requested in the course of the permitted activities targeted by the Rule (*i.e.*, health oversight, judicial and administrative proceedings, law enforcement purposes, and/or disclosures to coroners and medical examiners regarding decedents) without a valid

Attestation.

11. To facilitate compliance with the prohibition against the use or disclosure of reproductive health care information for an improper purpose, the 2024 Privacy Rule establishes an Attestation Requirement. *89 Fed. Reg. 33027*. The Attestation Requirement applies only when: (a) the request for PHI *potentially* relates to reproductive health care and (b) when the request relates to health oversight activities, and/or judicial and administrative proceedings, and/or law enforcement purposes, and/or disclosures to coroners and medical examiners regarding decedents. *See 45 CFR §164.509(a)(1) and 45 CFR 164.512(d)–(g)(1)*.
12. The Attestation Requirement provides “a standard mechanism by which the regulated entity can ascertain whether a requested use or disclosure is prohibited under this final rule.” *89 Fed. Reg. 33029–33030*. Similarly, restriction of the application of the Attestation Requirement to requests for PHI that are “*potentially*” related to reproductive health care was meant to ease “the burden of the attestation requirement on regulated entities and persons requesting PHI.” *Id.*, at 33029.
13. According to Michael Barrieau, Prisma Health lacks the resources necessary to safeguard against PHI information being disclosed, and because Prisma Health could be subject to substantial civil penalties if PHI information is inadvertently disclosed. Because the 2024 Privacy Rule was created to better preserve and promote public trust in health care professionals and health information infrastructure, Prisma Health would be in the best position to reduce the risk of potential exposure to legal action by not disclosing PHI information it believes violates reproductive health lawful confines as opposed to the State.²

² The Solicitor’s Office expressed legitimate concerns about a grant of immunity arising from signing this attestation clause. It is the opinion of this Court that the attestation document could be revised by the parties to avoid a blanket grant of immunity. Consideration of a drawback provision in the Attestation would also be beneficial to the parties.

14. Although this court has found and concluded that PHI is not to be released, this order shall serve as a protective order in the event PHI is inadvertently released by virtue of Prisma Health in compliance with the orders. Accordingly, information produced in these matters shall only be used for the prosecution of the bodily injuries resulting from the DUI charges and for no other purposes. Moreover, only the prosecuting officials of the DUI offences shall have access to these documents.
15. Prisma Health has 20 days from the date of this order in which to produce the requested information as set forth in this order and the previous court orders with regard to producing documents from the date of accident to the date of release from the hospital.

Conclusions of Law

1. *28 U.S. Code §1446(3) governs the procedure for removal of civil actions to Federal Court.*
2. *45 C.F.R. 45 164.500-534 et. seq. governs HIPAA and healthcare privacy.*
3. *Rule 37(D), SCRCF governs failure of a party to respond to written interrogatories or requests for inspection.*
4. *Rule 82, SCRCF governs venue and removal to Federal courts.*
5. *SC Code Ann. §§ 14-1-70 to 14-1-80 (2025) governs jurisdiction of circuit courts.*
6. *Rules 8.1, 8.2, and 8.4, SCACR govern conduct of officers of the court.*
7. *Rule 413, SCACR governs discipline of lawyers.*
8. *SC Code Ann. §§ 18-9-10 and 50 (2025) govern Appeals.*

Order

IT IS HEREBY ORDERED that Prisma Health shall produce within 20 days from the date of this order the medical documents pertaining to the cases of Dawkins and Lobos to the State of South Carolina; Thirteenth Circuit Solicitor's Office.

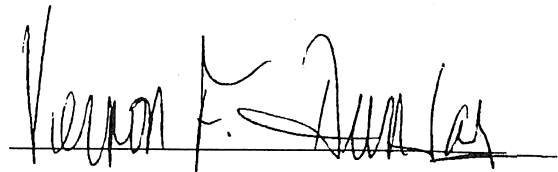
IT IS FURTHER ORDERED the medical records produce shall be for the exclusive use for the prosecution of Dawkins and Lobos, Defendants, only with regard to the charges of driving under the influence resulting in great bodily injury and death and for no other reason.

IT IS FURTHER ORDERED that the documents shall only be disclosed and used by the prosecutors prosecuting the criminal charges in the aforesaid matters.

IT IS FURTHER ORDERED in the event protected health information regarding reproductive health is inadvertently disclosed or released, this order shall serve as a protective order prohibiting the release or use of such information and cannot be disseminated to any other agency or used in any criminal proceedings other than for prosecution of driving under the influence criminal charges.

AND IT IS SO ORDERED.

May 7, 2025

A handwritten signature in black ink, appearing to read "Vernon F. Dunbar", written over a horizontal line.

**Vernon F. Dunbar,
Circuit Court Judge
Thirteenth Judicial Circuit**