

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mohamed Mohamed Noor,

Defendant.

Court File No.: 27-CR-18-6859

MOTION TO SUPPRESS

Defendant, Mohamed Noor, by and through his attorneys, hereby moves the Court to suppress evidence obtained from two search warrants. The first warrant was issued on August 31, 2017, and directed the Minneapolis Police Department to produce psychological records related to Officer Noor. The second search warrant was issued on November 30, 2017, and directed Dr. Thomas Gratzner to produce all psychological records related to Officer Noor. The issuance of both search warrants violated the physician-patient privilege. As a result, Officer Noor's medical records must be suppressed.

Both the United States and the Minnesota Constitutions protect citizens from unreasonable searches and seizures. To safeguard that guarantee, the Fourth Amendment of the United States Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV (emphasis added). The Minnesota Constitution uses the same language with minor stylistic differences. Minn. Const. art. I, § 10. In Minnesota, medical records have an additional layer of statutory

protection. The physician-patient privilege prohibits disclosure of medical records to any third party without patient consent—even pursuant to a search warrant. See State v. Poetschke, 750 N.W.2d 301, 304 (Minn.Ct.App. 2008). The physician-patient privilege statute states that,

[a] licensed physician or surgeon, dentist, or chiropractor shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity, and which was necessary to enable the professional to act in that capacity; after the decease of the patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more, the beneficiaries shall be deemed to be the personal representatives of the deceased person for the purpose of waiving this privilege, and no oral or written waiver of the privilege shall have any binding force or effect except when made upon the trial or examination where the evidence is offered or received.

Minn.Stat. § 595.02, subd. 1(d). “The purpose of the privilege is to encourage patients' full disclosure of information, which will enable medical providers to extend the best medical care possible.” State v. Gillespie, 710 N.W.2d 289, 297 (Minn.Ct.App. 2006). Medical records generally fall under the physician-patient privilege. State v. Blom, 682 N.W.2d 578, 617 (Minn. 2004). Of course, a patient may waive the privilege. Blom, 682 N.W.2d at 617.

The medical records at issue in this case relate to the psychological testing Officer Noor completed during his employment process with the Minneapolis Police Department. These medical records are the same medical records produced for every new Minneapolis Police Officer hire. At the time of Officer Noor's hiring, Dr. Gratzner, MD was engaged by the police department to perform the testing of new officer candidates. In that process, Officer Noor provided a limited waiver of the physician-patient privilege,

allowing his medical records to be used by the Minneapolis Police Department during the hiring process. Officer Noor did not consent to the use of his medical records for any other purpose and has not consented to use by the State in this case.

WHEREFORE, for all the foregoing reasons, Officer Noor's medical records seized by the State must be suppressed.

Respectfully submitted,

Dated: August 10, 2018.

s/ Thomas C. Plunkett
Thomas C. Plunkett
Attorney No. 260162
Attorneys for Defendant
Suite 1500
101 East Fifth Street
St. Paul, MN 55101
Phone: (651) 222-4357

s/ Peter B. Wold
Peter B. Wold, ID #118382
Wold Morrison Law
247 Third Avenue South
Minneapolis, MN 55415
Phone: 612-341-2525
Fax: 612-341-0116