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IN THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY
SALT LAKE DEPARTMENT, STATE OF UTAH

STATE OF UTAH,	:	MEMORANDUM IN OPPOSITION
	:	TO DEFENDANT'S MOTION TO
Plaintiff,	:	SUPPRESS
	:	
vs.	:	
	:	Case No. 131910379
RYAN DOUGLAS PYLE,	:	
	:	Judge Vernice Trease
Defendant.	:	

The State of Utah, by and through counsel, hereby submits this Memorandum in Opposition to Defendant's Motion to Suppress. For reasons discussed below, Defendant's Motion to Suppress should be denied.

STATEMENT OF FACTS

On April 23, 2013, Detective James Woods of the Cottonwood Heights Police Department (CHPD) was assigned to investigate reports that opioid pain medications were missing from an ambulance associated with the Unified Fire Authority (UFA). The problem was discovered when a paramedic administered what was supposed to be liquid morphine to a patient who required emergency aid. The patient did not receive pain relief and the treating paramedic, who was from Station 114, could not understand what was happening. The treating paramedic

was ordered to administer more morphine, and in doing so observed that the seal over the opening of the morphine vial had been pierced with small holes other than the ones that he had produced when administering the contents to the patient. The holes were consistent with the piercings of a syringe needle.

After this incident, the fire crew from Station 114 inspected the morphine vials at the fire station and identified two that showed apparent signs of tampering. In addition to piercings in the seals and caps, the liquid levels in these vials varied from that of undisturbed vials. The fire chief called the Unified Police Department (UPD) to conduct an internal investigation. UPD conducted a field test of the liquid from the suspicious vials and sent them to the laboratory for fingerprint analysis. The liquid tested negative for morphine. A Haz Mat team arrived and identified the liquid as saline solution. A fire station audit of all fire stations in the area revealed evidence that someone had tampered with morphine, fentanyl, and Versed medications, all controlled substances, that had been stored at fire stations 114 and 116. Morphine and fentanyl are narcotic or opioid pain medications that are susceptible to abuse by those who have developed addictions to opioid drugs.

When the case was referred to the CHPD for a criminal investigation, Detective Woods met with UFA Command Staff to discuss the events of the theft. At that point, the individual tampering with the vials had not been identified, but fire and police officials believed the individual was a full-time firefighter or paramedic who would have had access to the controlled substances without arousing suspicion, and because of the manner in which the conduct was carried out. The UFA provided Detective Woods with a list of the names of the full-time

firefighters and paramedics who had access to the tampered vials. All were potential suspects since they all had access to controlled substance supplies throughout the department, regardless of firehouse assignment.

Because all prior attempts to determine who was tampering with the vials had been unsuccessful, Detective Woods accessed the Utah Controlled Substance Database (UCSD) which is maintained by the Utah Department of Commerce, Division of Occupational and Professional Licensing as a means of enforcing laws pertaining to controlled substance regulation. Detective Woods reviewed the prescription drug histories of each of the UFA employees on the provided list in an attempt to identify individuals who may have had a motive to steal opioid drugs. In particular he was looking for signs of possible opioid drug dependency as evidenced by heavy opioid prescription use combined with irregularities such as signs of doctor shopping or overlapping prescriptions. In doing so, he examined the prescription drug history of the Defendant, who was working full-time as a paramedic for the UFA. In the course of his investigation, Detective Woods found evidence which indicated that the Defendant had obtained multiple controlled substances from more than one medical provider within a short time frame.

ARGUMENT

I. Utah's Controlled Substance Database Act is a valid exercise of Utah's police powers and does not invade the Defendant's right to privacy.

Courts have continuously held that an individual's right to privacy in his medical records is *not* absolute, as it is "well settled that the state has broad police powers in regulating the administration of drugs by the health professions." *Douglas v. Dobbs*, 419 F.3d 1097, 1102 n.3

(10th Cir. 2005) (quoting *Whalen v. Roe*, 429 U.S. 589, 603, n. 30 (1977)). Thus, “state law can operate to diminish the privacy expectation in prescription drug records,” as Utah has done. *Id.*

In *Whalen*, a New York statute required the state to be provided with a copy of every prescription for Schedule II drugs, as defined by the legislature. *See Whalen v. Roe*, 429 U.S. 589 (1977). There the Supreme Court held individual States have “broad latitude in experimenting with possible solutions to problems of vital local concern” and that an attempt to regulate access to Schedule II medications was “a considered attempt to deal with such a problem.” *Id.* at 597. At the very least, a State’s “vital interest in controlling the distribution of dangerous drugs” would support its decision to experiment with ways to deal with the issue. *Id.* at 598. If the experiment were to fail, the legislative process would remain available to terminate the experiment. *Id.* The Court held that cases characterized as protecting “privacy” have involved two kinds of interests: an individual interest in avoiding disclosure of personal matters and the interest in independence in making certain kinds of important decisions. *Id.* at 599-600. The Court also held the New York statutory scheme did not pose a sufficiently grievous threat to either interest to establish a constitutional violation. *Id.* at 600. The Court found public disclosure could occur by a) “failing, deliberately or negligently, to maintain proper security,” b) offering the stored data into evidence during a judicial proceeding in which a violation by the patient or doctor is alleged, or c) a doctor, pharmacist, or patient could voluntarily reveal the information on a prescription form. *Id.* However, there was no evidence in the record for the assumption that the security provisions of the statute would be administered improperly. *Id.* at 601. Disclosures of such information to those with authorized access to the information are not

meaningfully distinguishable from a host of other invasions of privacy associated with many facets of health care, such as disclosures to doctors, hospital personnel, insurance companies, and public health agencies, even when the disclosures reflect unfavorably on the patient's character. *Id.* at 602. "Requiring such disclosures to representatives of the State having responsibility for the health of the community, does not automatically amount to an impermissible invasion of privacy. *Id.*

Similarly, the statutory scheme which is codified in the Utah Controlled Substance Database Act (the Act) was created to facilitate use of the UCSD for the identification of:

- (a) prescribing practices and patterns of prescribing and dispensing controlled substances;
- (b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;
- (c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and
- (d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy.

Utah Code Ann. § 58-37f-201. The Act limits access to the UCSD to a very narrow group of individuals. Utah Code Ann. § 58-37f-301. It also provides civil and criminal penalties for the unlawful release or use of information from the UCSD. Utah Code Ann. § 58-37f-601. The information contained in the UCSD may only be disseminated as described by the Act and is considered an exempt record under the Government Records Access and Management Act. *See* Utah Code Ann. § 63G-2-201. Under both *Whalen* and *Douglas*, the State of Utah has the ability

to regulate prescription records and it is a valid exercise of its regulatory authority to do so. Like the regulatory scheme in *Whalen*, the UCSD contains a very narrow look into an individual's medical history, provides protections from public disclosure and misuse of the information, and was created to monitor the distribution of dangerous medications. There is no evidence in the record that disclosure and access of these records has actually led individuals to avoid receiving medical care and medications, and arguments concerning these "clearly articulated fears" about the pernicious effects of disclosure have not been accepted by the courts because they require a court to assume too much. *See Whalen*, 429 U.S. at 601 n. 27 (comparing its reasoning regarding such arguments with its decision in *Buckley v. Valeo*, 424 U.S. 1(1976). Therefore, concerns about a reduction in public access to necessary medications are unfounded. *See Id.* at 603.

The regulatory scheme created by the Act is thus well within the State's police power and has diminished the privacy interest in prescription drug records. *See Douglas*, 419 F.3d at 1102 n.3; *Whalen*, 429 U.S. 589. Therefore, accessing information contained within the UCSD which is done in accordance with the Act would not be a Fourth Amendment violation and does not require suppression of the evidence.

II. Detective Woods was entitled to access to the Controlled Substance Database pursuant to U.C.A. § 58-37f-301.

The Act states DOPL shall make the information in the database available to:

(i) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:

(i) regulating controlled substances;

Utah Code Ann. § 58-37f-301. At the time of the investigation, Detective Woods was a narcotics officer for the CHPD. The specific duties of his employment included enforcing the controlled substance laws in the State of Utah. When Detective Woods ran the names given to him by UFA, the investigation conducted by the UPD had not produced enough evidence for anyone to be charged criminally. However, all of the names that Detective Woods ran through the UCSD were suspects in the investigation because they were full-time firefighters or paramedics with access to the controlled substances. Given this information, Detective Woods was entitled to run the names of the full-time firefighters and paramedics given to him by the UFA in the course of his active investigation to fulfill his duty as a narcotics officer to enforce the laws regulating controlled substances. This action was expressly authorized by the Act and is not a violation of the Fourth Amendment.

CONCLUSION

The Act is an appropriate exercise of Utah's police powers in regulating the administration of controlled substances. Detective Woods' search of the UCSD was conducted in accordance with the provisions of the Act. Consequently, there was no violation of the Fourth Amendment and the Defendant's Motion to Suppress should be denied.

Dated this 28th day of March, 2014.

SEAN D. REYES
Utah Attorney General

/s/ Lana Taylor

LANA TAYLOR
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2014, I sent the foregoing
MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS to the
following:

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