

[CAPTION]

**MOTION TO SUPPRESS ALL EVIDENCE SEIZED PURSUANT TO
SEARCH WARRANT (CONFIDENTIAL SUBSTANCE ABUSE
TREATMENT RECORDS)**

The Defendant, by counsel, respectfully requests this Court to suppress any and all evidence seized as a result of the issuance of a search warrant and executed in the above-captioned cause. In support of the Motion, the Defendant states the following:

1. The Defendant is charged with [insert offenses].
2. On [insert date], [insert officer] of the [insert police department] signed an Affidavit for the issuance of a search warrant authorizing the seizure and search of the medical records of the defendant for treatment received on [insert date], at [insert hospital] in [insert city], Indiana. As a result of the issuance of the search warrant, and the execution of the warrant on [insert date], all medical records pertaining to the Defendant's emergency room admission and subsequent treatment for an alleged heroin overdose and alleged usage of other controlled substances were seized. The prosecution has indicated its intention to introduce said medical records, as well as live witnesses whose identity and knowledge were revealed to the prosecution as a result of the seizure of said medical records in the prosecution of this cause.
3. The search warrant's issuance was in violation of the Fourth Amendment to the United States Constitution, Article I, Section 11 of the Indiana State Constitution, Title 42 U.S.C. § 290 dd-2, § 290ee-3 and 42 C.F.R. Part 2 which mandate the confidentiality of substance abuse records, I.C. 34-46-3-1, which establishes the patient-physician privilege, and I. C. § 16-39-1-9, which bars disclosure of drug records absent compliance with 42 U.S.C. § 290dd-3 and 290ee-3.
4. The affidavit in support of the search warrant's issuance only states that there is probable cause to believe that drug screen results from [insert hospital] would contain evidence of the Defendant's commission of the crime, of possession of heroin. Consequently, the fact that the search warrant issued for all of the medical records of the Defendant's treatment on [insert date], reflects the fact that the

warrant was overly broad and exceeded the justification for seizure of the medical records in their entirety.

WHEREFORE, the Defendant, by counsel, respectfully requests that the Court set this matter in for an immediate hearing, grant this Motion to Suppress, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

42 U.S.C. §290dd-2 (*replacing* 42 U.S.C. § 290dd-3 and § 290ee-3, *referred to by* I.C. 16-39-1-9 and concerning records pertaining to alcohol and drug abuse).

42 C.F.R. §§ 2.22 and 2.31(requirements and notice in order for consent to disclosure of records to be valid).

42 C.F.R. § 2.35 (restricting the duration of consent and use of the information to purposes only in connection with the reason for the consent).

CASELAW

Hurt v. State, 694 N.E.2d 1212 (Ind.Ct.App. 1998) (because there is no evidence that the Defendant's confession was maintained in connection with performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, the hospital that received the federal funding was not required to obtain a Court order prior to releasing the Defendant's statements to police).