

THE STATE OF TEXAS	§	IN THE 6th DISTRICT COURT
	§	
V.	§	OF
	§	
STANLEY WAYNE MAGGARD	§	LAMAR COUNTY, TEXAS

**MOTION FOR HEARING ON COMPLIANCE WITH ORDER ON COUNSELING RECORDS
PRODUCTION**

COMES NOW the Defendant herein and respectfully moves this Honorable court for hearing on the compliance of third party witnesses with the Court’s order on production of counseling records AND SHOWS THE FOLLOWING IN SUPPORT:

1. The Court entered its *Agreed Order on the State’s Production of Counseling Records to Defendant* [the “Order”] on December 17, 2013 and it was filed herein the same day. [See attached].
2. The Order was presented on December 26, 2012 to the various parties who, on information and belief, hold such records: Counseling Professionals of NE Texas [“CPNET”] via facsimile, and the Paris, Texas office of Texas CPS [“CPS”]. Counsel confirmed receipt of the faxed Order at 10:02 A.M. with CPNET reception.
3. CPS advised it had no such records and directed counsel to CPNET.
4. CPNET resisted production of the records as ordered on the face of the order and instead contacted Assistant District Attorney Jill Drake about compliance. Ms. Drake advised the undersigned that Roni Kay Rusac of CPNET wished to review the records over the weekend of January 5-6 before production on Monday January 7, 2013 directly to the office of the Lamar County DA; however, CPNET failed to produce on January 7, 2013. [See attached emails between Drake and the undersigned].
5. Counsel telephoned CPNET multiple times about production and was advised by the receptionist that they had in fact produced.
6. On or about January 15, 2013, the investigator retrieved records himself from the offices of CPNET and delivered them to Ms. Drake because Ms. Rusac refused to produce them directly to directly to the undersigned as expressly set forth in the Order. The undersigned took delivery of records of both Whitney and Emily Maggard that day from Ms. Drake.
7. On inspection of the records produced, it is apparent to both the undersigned and his investigator, Ray Ball, that some records are omitted from those produced. Ball contacted CPNET and CPS about the missing records, as

well as a third entity that CPNET indicated might have records, STAR/TYC. None of the three entities would explain the missing records or produce them.

DISCUSSION

The counseling records produced detailed interviews of both the alleged victim and the alleged initial “outcry witness”, her sister, Whitney Maggard. As set forth in Defendant’s motion for a taint hearing filed earlier, such interviews are vital evidence in this case and are exactly the kind of impeachment material that is the subject of Constitutional requirements of confrontation under the State and federal law. According to Ms. Rusac, CPS has advised her that such records “belong to CPS” and that she normally refuses to release them, so she directed counsel to CPS for the records. CPS, however, expressly denies possession of any such records. [See attached email].

So we have an apparently exceptional situation in this case in that CPS does not possess records it normally possesses [because it apparently refers such alleged victims to counseling in the first place, CPS convention apparently is to maintain that the records “belong” to CPS, at least according to Ms. Rusac]. Further, STAR/TYC - according to Ms. Rusac, where the alleged victim first obtained counseling before the counselor, Beth Gilmer, moved to CPNET - denies possession of any such records when approached by Mr. Ball this week. As a result, it would appear the likely possessor of the missing records would have to be CPNET, but Mr. Ball advises that he is unable to elicit cooperation from CPNET in this regard notwithstanding an in-person request and multiple phone calls.

Accordingly, it appears an evidentiary hearing is required to inquire into the true custodian[s] of the complete records described in the Order, and, unfortunately, to compel their production.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Honorable Court will grant this, the Defendant's Motion for Hearing on Compliance with Order on Counseling Records Production and set the matter for hearing from the witnesses with personal information about the records, determine what records exist, where they are, and compel immediate production of all such extant records, and compel the continuing production of such records directly to the Defendant’s counsel as they are generated, and such other relief as the Court finds just, fair and equitable.

Respectfully submitted,

By:

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ORDER SETTING HEARING

On review of the motion herein, the Court finds that evidentiary hearing should be conducted and that witnesses attend, and that hearing is set for the _____ day of _____, at _____:_____0 ____M. at the Lamar County Courthouse.

ENTERED this _____ day of _____, 2013.

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF SERVICE

The undersigned certifies that on January 31, 2013 a true and exact copy of the foregoing was delivered to the office of the Lamar County District Attorney.

G. Donald Haslam, Jr.