

1 **LAW OFFICES OF JOSHUA S. DAVIDSON, PLC**
2 8110 East Cactus Road - Suite 100
3 Scottsdale, Arizona 85260
4 Telephone 480-248-7022
5 Facsimile 480-336-2250
6 Joshua S. Davidson 019048
7 *josh@j davidsonlaw.com*
8 Attorney for Defendant

VALERIE WYANT CLERK

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10 **IN THE SUPERIOR COURT**
11 **IN AND FOR THE COUNTY OF COCONINO, STATE OF ARIZONA**

12 STATE OF ARIZONA,
13
14 Plaintiff,

Case No. CR2015-00862

**RESPONSE TO STATE'S MOTION FOR
RELEASE OF MEDICAL RECORDS**

15 vs.

(Hon. Dan Slayton - Div. 2)

16 **STEVEN EDWARD JONES,**
17
18 Defendant.

19 Defendant, by and through undersigned counsel, moves this Court for its
20 Order denying the State's Motion. As set forth below, the State's motion is without
21 merit and blatantly ignores statutory authority that prohibits the relief sought.

22 It is well established in Arizona that a person's medical records and oral
23 communications to physicians are protected by the physician-patient privilege.
24 State v. Morales, 170 Ariz. 360, 363, 824 P.2d 756, 759 (App. 1991)(citing State v.
25 Santeyan, 136 Ariz. 108, 664 P.2d 652 (1983); Tucson Medical Center v. Rowles, 21
26 Ariz.App. 424, 520 P.2d 518 (1974)). Nevertheless, the State asks the Court to
27 compel the production of the records pertaining to the medical care previously
received by the defendant.

The State ignores A.R.S. § 13-4062. As the Court is no doubt aware, 13-
4062(a)(4) prohibits a doctor from testifying about information necessary for the
care of the patient which was acquired while attending that patient. "The privilege
also applies to related medical records." State ex rel. Udall v. Superior Court In &

1 For County of Apache, 183 Ariz. 462, 464, 904 P.2d 1286, 1288 (App. 1995) (citing
2 Morales).

3 In addition to a passing reference to the *civil* counterpart of § 13-4062
4 without any discussion of that statute itself, the State also relies on several prior
5 published opinions to support its position. As set forth below, the State's reliance
6 on these cases is misplaced at best.

7 Johnson v. O'Connor ex rel. County of Maricopa, 235 Ariz. 85, 327 P.3d 218
8 (App. 2014), as amended (June 6, 2014), involved a summons issued by an Arizona
9 court under the Uniform Act to Secure the Attendance of Witnesses From Without
10 a State. Unlike the court order sought by the State here, the summons in Johnson
11 pertained to psychological records that were already subject to *mandatory*
12 disclosure under A.R.S. 13-3620 because the patient disclosed to the treating
13 psychologist that he previously abused a minor child. The abuse apparently
14 occurred in the state of Wisconsin and criminal charges were filed in that
15 jurisdiction. At the request of the Wisconsin criminal court, the Maricopa County
16 Superior Court issued a summons for the records under the Uniform Act. The
17 primary substantive issue in Johnson was whether an assertion of privilege could be
18 made in the Arizona court that issued the summons or whether it needed to be
19 made before the criminal court in Wisconsin where the charges were pending.
20 Based in part on the statutory nature of the privilege in Arizona, the court in
21 Johnson merely held that privilege would need to be determined by the Wisconsin
22 court in accordance with Wisconsin law. Accordingly Johnson is inapposite and
23 provides no support for the prosecution's contention that it is entitled to Mr. Jones'
24 medical records.

25 Benton v. Superior Court, 182 Ariz. 466, 897 P.2d 1352 (App.1994), likewise
26 provides no support for the State's position. While not discernable from the State's
27 Motion, Benton did not involve a request to compel the medical records of the

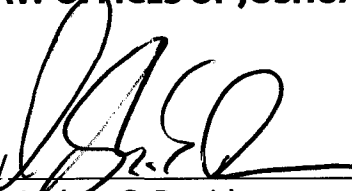
1 accused. Rather, it was an assertion of privilege *by the victim* of her own medical
2 records that were at issue there. Not only was Benton decided in the context of the
3 *victim's* medical records, the Arizona Court of Appeals subsequently rejected the
4 State's attempt to expand Benton's holding to the medical records of a criminal
5 defendant in State v. Wilson, 200 Ariz. 390, 395, ¶¶ 11-12, 26 P.3d 1161, 1166 (App.
6 2001), as corrected (June 18, 2001).

7 Finally, in State ex rel. Udall v. Superior Court In & For County of Apache, 183
8 Ariz. 462, 465, 904 P.2d 1286, 1289 (App. 1995), the State sought the medical
9 records of the accused in a child homicide case involving the death of a newborn
10 infant. After explicitly recognizing that 13-4062 applies to medical records, Id. at
11 464, 904 P.2d at 1288, the court found that 13-3620(f) abrogated the privilege
12 *because the underlying case involved the abuse of a child.* Id. at 465, 904 P.2d at 1289.
13 In this case, the State does not and cannot allege that that 13-3620(f) is applicable
14 nor do they cite any other any other statutory exception to the physician/patient
15 privilege.

16 The State's motion is meritless and should be summarily denied.

17
18 DATED this 26th day of January, 2017.

19 **LAW OFFICES OF JOSHUA S. DAVIDSON, PLC**

20
21
22 By 
23 Joshua S. Davidson
24 Attorney for Defendant
25
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27

Law Offices of Joshua S. Davidson, PLC

8110 East Cactus Road - Suite 100 • Scottsdale, Arizona 85260
Telephone (480) 248-7022 • Facsimile (480) 336-2250

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Clerk of the Coconino County Superior Court
200 N. San Francisco St.
Flagstaff, AZ 86001

COPY of the foregoing e-mailed
this same date to:

Carrie Faultner
Judicial Assistant to Hon. Dan Slayton
200 N. San Francisco St.
Flagstaff, AZ 86001
cfaultne@courts.az.gov

Ammon Barker
Coconino County Attorney's Office
110 E. Cherry Avenue
Flagstaff, Arizona 86001 4627
abarker@coconino.az.gov

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