

NO. _____

IN THE MATTER OF)	IN THE DISTRICT COURT
GRAND JURY INVESTIGATION.)	
JULY 7 - DECEMBER TERM, 2018)	186th JUDICIAL DISTRICT
)	
)	BEXAR COUNTY, TEXAS

MOTION TO QUASH GRAND JURY SUMMONSES

TO THE HONORABLE JUDGE OF SAID COURT:

Movant, B.G. moves to quash grand jury summonses issued to Robert Martinez, M.D. and for good cause shows the following:

I.

Movant is fourteen years old. He has a long standing doctor-patient relationship with Dr. Martinez. During this relationship, which has existed since Movant was a very young child, there have been communications between Dr.Martinez relative to and in connection with Dr. Martinez’s professional services as a physician to his patient. Additionally, records concerning evaluation and treatment of the patient by the physician have been created and maintained by the physician and his staff and associated professionals. On July 1, 2018, a petition was filed in the 73rd Judicial District Court alleging that Movant committed the offenses of aggravated sexual assault and indecency with a child on or about one specific date, against a specifically named child in Bexar County, Texas. Counsel obtained a copy of this petition from the Bexar County District Clerk’s office. Subsequent to this date, apparently after the petition had been filed in district court, the State of Texas issued grand jury summonses for Dr. Martinez

commanding that they bring “any and all records pertaining to” B.G., “including, but not limited to counseling, psychological and progress notes.”

II.

B.G. moves to quash these grand jury summonses because they are overbroad, and violate his constitutional right to privacy guaranteed by the Fourth and Fifth Amendments to the United States Constitution, and Article I, §§ 9, 13, and 19 of the Texas Constitution as well as article 38.23 of the Texas Code of Criminal Procedure.

III.

B.G. moves to quash the grand jury summonses because they would effect a search and seizure of his medical records without warrant or probable cause, in violation of the Fourth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 9, 13, and 19 of the Texas Constitution, as well as article 38.23 of the Texas Code of Criminal Procedure.

IV.

Disclosure of communications between a licensed physician and his staff, relative to or in connection with any professional services as a physician to a patient is confidential and privileged and may not be disclosed pursuant to the Texas Medical Practice Act, Tex. Rev. Civ. Stat. Ann. art. 4495(b), § 5.08(a). Records of the identity, diagnosis, evaluation or treatment of a patient by a physician created or maintained by the physician is confidential and privileged and may not be disclosed pursuant to article 4495(b), § 5.08(b). No exceptions provided by § 5.08 are applicable to Movant’s case.

V.

Prior to the issuance of the grand jury summonses, undersigned counsel had retained Dr. Martinez to serve as members of the defense team to assist in the preparation, evaluation, and presentation of B.G.'s defense concerning the petition in the 73rd Judicial District Court. Communications between Dr. Martinez and records concerning these communications are thus privileged under Article V of the Texas Rules of Evidence.

VI.

The use of summonses described in this motion violate the grand jury process as established by the Texas Code of Criminal Procedure, the Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 10 of the Texas Constitution. Movant is not subject to indictment because of his age. As such, there is nothing for the grand jury to investigate, and it is apparent that the grand jury is being misused to obtain otherwise private and confidential records. Moreover, as mentioned previously, it appears that the petition in this case has already been filed. Because the criminal investigation has concluded, it would be improper to use the grand jury for further investigation.

WHEREFORE, premises considered, movant prays that the Court quash the grand jury summonses in the above entitled cause.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of Motion To Quash Grand Jury Summonses has been delivered to the Bexar County Juvenile District Attorney's Office, 235 E. Mitchell; San Antonio, Texas, on November 25, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered movant's Motion To Quash Grand Jury Summonses, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING