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By Order of the Court, Judge TERESA KIM-TENORIO

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**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
 NORTHERN MARIANA ISLANDS,**

Plaintiff,

vs.

SERGIO MANGARERO RANGAMAR,

Defendant.

CRIMINAL CASE NO. 23-0089

**ORDER DENYING DEFENDANT’S
 MOTION TO COMPEL DRUG COURT
 PROGRAM RECORDS**

I. INTRODUCTION

This matter came before the Court on December 21, 2023, at 10:30 a.m. in Courtroom 217A, Guma Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands, for a Pretrial Conference. The Commonwealth of the Northern Mariana Islands (“Commonwealth”) was represented by Chief Prosecutor Chester Hinds. Defendant Sergio Mangarero Rangamar (“Defendant”) appeared and was represented by Assistant Public Defender Molly Dennert. Defendant motioned to compel disclosure of Drug Court Program Records.

Based on a review of the parties’ filings, oral arguments, and applicable law, the Court now issues this Order Denying Defendant’s Motion to Compel Drug Court Program Records.

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II. BACKGROUND

The Commonwealth charged Defendant with Assault and Battery, Assault and two counts of Disturbing the Peace for an incident that allegedly occurred on July 19, 2023. The Commonwealth charges that Defendant fired a pellet gun at Amanda Desebel (“Desebel”) and Rodrick Blanco, injuring Desebel. The Court set a trial in the matter for January 16, 2024. On September 21, 2023, Desebel entered the CNMI Drug Court Program (“DCP”). On November 15, 2023, Defendant submitted a Motion to Compel Desebel’s DCP Records (“Motion”), arguing their necessity in cross-examining Desebel. On December 4, 2023, the Commonwealth submitted its Opposition to Defendant’s Motion. On December 7, 2023, Defendant submitted a Reply to the Commonwealth’s Opposition. On December 21, 2023, the Court heard Defendant and the Commonwealth’s arguments on the Motion at a Pretrial Conference.

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III. LEGAL STANDARD

“Relevant evidence is admissible unless any of the following provides otherwise: . . . rules prescribed by the Commonwealth Supreme Court.” NMI R. EVID. 402. “Federal and Commonwealth laws of confidentiality govern the Drug Court and its treatment programs.” NMI J. DRUG CT. P & P. 9. Federal law restricts “disclosure [of] . . . information . . . obtained by a federally assisted drug abuse program . . .” 42 C.F.R. § 2.11, ¶ 16. “Disclosure of information received in the course of treatment is strictly prohibited unless a court order ‘for good cause’ is issued.” NMI J. DRUG CT. P & P. 9. A court may review confidential treatment records for disclosure “[i]f authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor . . . In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.” 42 USC § 290dd-2(b)(2)(C).

IV. DISCUSSION

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2 Defendant argues that disclosure is necessary to impeach Desebel’s credibility as a witness
3 by asking about her substance use on cross-examination. The Commonwealth argues that
4 Desebel’s DCP records should remain confidential and that there is no good cause for disclosure.
5 The first issue before the court is whether CNMI DCP records are subject to confidentiality laws.
6 The second issue is whether Defendant has shown good cause to disclose Desebel’s DCP records.

a. CNMI DCP Records are Subject to Confidentiality Laws.

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8 In the Reply, and at the Pretrial Conference, Defendant cast doubt as to whether the DCP is
9 a “treatment court.” (Reply, 3 ¶ 24.)¹ Semantics aside, federal regulation explicitly restricts
10 “disclosure [of] . . . information . . . obtained by a federally assisted drug abuse program . . .”²
11 C.F.R. § 2.11, ¶ 16. The DCP receives grants from the Bureau of Justice Assistance, a component
12 of the federal Department of Justice.² Even if the DCP did not receive these grants, “federal
13 assistance includes both direct and indirect funding. It is not necessary for the drug court itself to
14 receive grants from the U.S. Department of Justice or another federal agency. It is sufficient for the
15 state or local government that funds the court to receive federal support for any program. It is
16 therefore likely that all drug courts are ‘federally assisted.’”³

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18 Federal confidentiality laws apply to any drug court that “holds itself out as providing, and
19 provides, alcohol or drug abuse diagnosis, treatment or referral for treatment.”⁴ A drug court is
20 covered “if it has employees who conduct screening or assessments to diagnose participants as
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23 ¹ Even claiming in the Reply that “legally, there is no such thing as a ‘treatment court.’” (Reply, 3 ¶ 24.)

24 ² See, e.g., *Northern Mariana Islands FY18 Adult Drug Court Project*, BUREAU OF JUSTICE ASSISTANCE (2018),
<https://bja.ojp.gov/funding/awards/2018-dc-bx-0136>.

25 ³ See Judge Jeffrey Tauber, Susan P. Weinstein and David Taube, *Federal Confidentiality Laws and How They Affect
Drug Court Practitioners*, NATIONAL DRUG COURT INSTITUTE (April 1999),
<https://www.wicourts.gov/courts/programs/problemsolving/docs/federalconfidentiality.pdf>.

⁴ See *id.*

1 substance abusers.”⁵ “Also, if employees of the court refer participants to drug treatment, or if the
2 drug court judge issues a mandate requiring drug treatment, then the court is a program covered
3 by” federal confidentiality laws.⁶ The DCP is federally assisted and, according to standards
4 prescribed by the National Drug Court Institute, it is a drug abuse program.

5 Even if the DCP were not federally assisted, evidence is admissible unless “rules prescribed
6 by the Commonwealth Supreme Court” provide otherwise. *See* NMI R. EVID. 402. The DCP
7 Policies and Procedures are “rules prescribed by the Commonwealth Supreme Court.” *See*
8 *generally* NMI J. DRUG CT. P & P. “Commonwealth laws of confidentiality govern the Drug Court
9 and its treatment programs.” *See id* § 9. “Disclosure of information received in the course of
10 treatment is strictly prohibited unless a court order ‘for good cause’ is issued.” *See id*. Drug Courts
11 provide treatment.⁷ The DCP is a treatment court. Federal and Commonwealth confidentiality laws
12 protect its activities and records.

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14 As Defendant notes, however, federal law provides avenues by which confidential
15 treatment records may be disclosed in court. A court may review confidential treatment records for
16 disclosure “[i]f authorized by an appropriate order of a court of competent jurisdiction granted after
17 application showing good cause therefor . . . In assessing good cause the court shall weigh the
18 public interest and the need for disclosure against the injury to the patient, to the physician-patient
19 relationship, and to the treatment services.” 42 USC § 290dd-2(b)(2)(C). Therefore, the Court must
20 determine whether Defendant has shown good cause to disclose Desebel’s confidential records.

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⁵ *See id.*
⁶ *See id.*
⁷ *See supra* note 3.

1 **b. The Court Adopts the “State with Particularity” Standard for Good Cause**
2 **Determination.**

3 Defendant inconsistently requested relief in the Reply and at the Pretrial Conference. In the
4 Reply, Defendant claimed the Court “may schedule a hearing to determine good cause for
5 disclosing the records.” (See Reply 6 ¶ 7.) At the Pretrial Conference, Defendant requested in
6 camera review of Desebel’s DCP records to determine good cause. The Court notes that in camera
7 review, not a hearing, is proper when making good cause determinations. *See People v Hammon*,
8 938 P.2d 986, 988 (Cal. 1997) (reviewing Defendant’s good cause application without hearing,
9 finding no good cause).

10 Another 9th Circuit jurisdiction ruled on good cause analysis for disclosure of confidential
11 victim records. Initially, Oregon adopted a “might yield” standard, allowing in camera review
12 when records “might yield” evidence favorable to the Defendant. *See generally Frease v. Glazer*, 4
13 P.3d 56 (Or. 2000). However, noting the ease with which this allowed Defendants to delay trial and
14 open sealed records, Oregon altered course. “[A] defendant should ‘state with as much particularity
15 as possible’ the evidence that is favorable to him or her . . . a trial court is not obligated to
16 undertake in camera review of records . . .” *See State v. Wixom*, 366 P.3d 353, 362 (Or. Ct. App.
17 2015).

18 The Court therefore adopts the newer “State with Particularity” standard when deciding
19 whether to conduct in camera review of a victim’s confidential treatment records. Before the Court
20 determines whether there is good cause to review records, the Defendant must state with
21 particularity what evidence and records are to be reviewed.
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1 **c. Defendant does not State with Particularity or Show Good Cause.**

2 The Reply lists information that “defense is specifically interested in.” (*See* Reply 1 ¶ 24.)
3 Most of this information is not, however, specific.⁸ Defendant requests “information that shows
4 that the Drug Court Judge found the Government’s witness violated the terms of the court by being
5 dishonest.” (*See* Reply 1 ¶ 25.) This is speculation, and does not state favorable evidence “with
6 particularity”. *See Wixom*, 366 P.3d at 362. While such a request “might yield” favorable evidence,
7 Defendant does not provide any factual basis for the existence of “information that shows that the
8 Drug Court Judge found the Government’s witness violated the terms of the court by being
9 dishonest” (*See* Reply 1 ¶ 25.) Speculation is impossible to state with specificity or particularity.
10 Similarly speculative are Defendant’s requests for “any allegations of dishonesty” and “any
11 information revealed in the course of treatment or in court regarding the allegations against
12 [Defendant], and the Government witness’s substance use near the time of the incident.” (*See id* at
13 1 ¶¶ 26, 27.) These requests are “fishing expeditions” and do not meet the threshold particularity
14 required for good cause analysis. *See Holifield v. Turner*, 2021 U.S. Dist. LEXIS 106173 *9 (Dist.
15 Ct. N.D. Miss. 2021).

17 The other information “defense is specifically interested in,” while not speculative, is not
18 good cause to unseal confidential treatment records in camera. (*See* Reply 1 ¶ 24.) Defendant
19 requests records of “the substance(s) used and the length of time used” and “the date and result of
20 drug tests.” (*See id* at 1 ¶¶ 26, 27.) Publicly available Policies and Procedures describe DCP as a
21 court dedicated to helping those suffering from substance use disorder. NMI J. DRUG CT. P & P.
22 1(e)(3). DCP participants are “monitored by frequent alcohol and drug testing.” *See id* at 2(b)(5).
23 Therefore, Defendant can “State with Particularity” that this potentially favorable evidence exists.
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⁸ Defendant also did not “state with particularity” whether he requests disclosure from this Court or the Office of the Attorney General.

1 See *Wixom*, 366 P.3d at 362. However, the Court does not find good cause to review this
2 confidential treatment information in camera.

3 “In assessing good cause the court shall weigh the public interest and the need for
4 disclosure against the injury to the patient, to the physician-patient relationship, and to the
5 treatment services.” 42 USC § 290dd-2(b)(2)(C). Here, “injury to the patient . . . and to the
6 treatment services” heavily outweighs “the public interest.” *See id.* “Confidentiality is a
7 cornerstone of any treatment relationship. For people receiving substance use disorder (SUD)
8 treatment, strict confidentiality protections mean that [they] can share information about past and
9 current drug use without worrying that it will be used against [them].”⁹ Confidentiality is
10 fundamental to the success of the drug court participant and the DCP as a whole. DCP treatment
11 includes, but is not limited to, referral to medical/addiction services, drug testing, individual/group
12 counseling, psychiatric care, participant supervision, education, training and case management.
13 Every aspect of DCP treatment depends on openness and honesty. Participants must trust the DCP.
14 They will not engage with the program openly and honestly if treatment records are subject to the
15 ease of disclosure suggested by Defendant.
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17 Furthermore, Defendant can gain information about Desebel’s substance use, substance of
18 choice, drug tests, and drug test results by asking her about them on cross-examination. Unsealing
19 Desebel’s records would expose her challenging and extensively stigmatized personal struggle
20 simply to prove information about which Defendant can ask Desebel under oath. Such a breach of
21 confidentiality would substantially injure Desebel and “the treatment services” of DCP. *See* 42
22 USC § 290dd-2(b)(2)(C). This far outweighs the public interest of confronting Desebel with
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⁹ Deborah A. Reid, Jacqueline Seitz, et al., *Fundamentals of 42 CFR Part 2 and SUD Treatment Privacy*, LEGAL ACTION CENTER (Oct. 2022), <https://www.lac.org/resource/the-fundamentals-of-42-cfr-part-2>.

1 information that Defendant can more easily obtain by less injurious means. *See id.* Therefore, the
2 Court does not find good cause to review the requested DCP records in camera.

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4 **V. CONCLUSION**

5 “The United States Supreme Court held in *Brady v. Maryland* that ‘suppression by the
6 prosecution of evidence favorable to an accused upon request violates due process where the
7 evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of
8 the prosecution.’ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).” (See M. to Comp. Disc. DCP Rec.,
9 2.) However, neither the Commonwealth nor the Court is suppressing evidence. Instead, the Court
10 is compelled by federal and Commonwealth law to deny disclosure of Desebel’s confidential
11 treatment records.

12 Based on the matters adduced, Defendant’s Motion to Compel Drug Court Program
13 Records is hereby **DENIED**.

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15 **SO ORDERED** this 27th day of December 2023.

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17 /s/
TERESA K. KIM-TENORIO
18 Associate Judge