Brandon M. Thompson
Judge

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WASHINGTON COUNTY CIRCUIT COURT
150 North First Avenue
Hillsboro, OR 97124

May 26, 2023

OPINION AND ORDER

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Re: State v. Beck Fries 21CR44020

State v. Stephanie Hartt 21CR59715

Findings and facts and conclusions of law:

In these cases, there are two issues before this court. The first is how to address defendants Beck Fries and Stephanie Hartt and their ability to complete treatment before their diversion term period ends. If they cannot complete within the petition term date, have they shown a good faith effort so they could be granted an extension? The second issue relates to the actions of the Oregon Health Authority (OHA) and its employee Marisha Elkins, who has repeatedly obstructed this court's ability to receive essential information. Ms. Elkins actions are not limited to these cases and demonstrate a repeated pattern of interfering with this court's lawful authority.

Hearing Testimony:

The Fries case has had a total of two hearings where evidence was received. They occurred on December 16, 2022, and January 6, 2023. In the Hartt case, there was testimony as to the actions Ms. Elkins on behalf of the OHA on January 30, 2023.

December 16, 2022:

Deanna Kemper:

The state's first witness was Deanna Kemper who is the owner of Evaluation Services (ES). She is the Alcohol & Drug Screening Specialist (ADSS) for Washington County. She testified that one of her responsibilities as the ADSS is to supervise a defendant's compliance with the court's diversion agreement. Ms. Kemper testified she received a call from defendant Fries in the summer of 2022 because he was not able to complete treatment within the one-year diversion timeframe and he was going to need more time to work with this treatment provider.

In August 2022, Ms. Kemper contacted Mr. Fries' treatment provider, Ms. Lynda Jenson, to find out what was going on with Mr. Fries and his treatment. Ms. Kemper knew there must have been compliance issues with Ms. Fries' treatment as his program should only take 90 days and he had been in treatment since February 2022. Ms. Jensen told Ms. Kemper that under the guidance of OHA and Ms. Marish Elkins, they could only send the "check the box form" and could not provide treatment details. (This is OHA form 8053 and is EX 1). Ms. Kemper went over the Oregon Administrative Rules (OAR) and that ES had a full Release of Information (ROI) on file. As this point Ms. Jensen provided the treatment details that ES requested which included Urine Analysis (UA) and treatment participation.

Ms. Kemper testified that the form presented (8053) does not have a location on the form to provide UA results or treatment participation. Those had to be provided separately. She also testified that after the initial disclosure of treatment details, Ms. Jensen went back to only providing information on the 8053 form and none of the details that she requested. The last report indicated that the Mr. Fries had completed treatment.

Ms. Kemper testified that she cannot supervise a person with the limited information included on form 8053. Ms. Kemper then discussed her obligations to the Washington County Circuit Court under existing Presiding Court Orders that requires reporting UA results and treatment participation. She also discussed Exhibit 1 and how form 8053 used to include a box where treatment details including UAs and participation were provided. However, this box was removed in the 2019 revision and now the form only has the check the box options and a signature line.

Ms. Kemper also discussed additional issues she has had both directly and indirectly with Ms. Elkins. Treatment providers have told her that Ms. Elkins has instructed them to withhold information from ES because ES is acting outside its authority as an ADSS. Ms. Elkins has told both ES and treatment providers that she does not believe people who voluntarily enter treatment and people who are court ordered should be treated differently. Therefore, an ADSS should not get information as they are working outside their legal authority and a treatment provider does not have to disclose even with a valid ROI. Finally, Ms. Kemper has had multiple conversations with Ms. Elkins directly in this past year where Ms. Elkins has stated that this county's Presiding Court order is not valid unless there is one in each individual's name.

Before the prior hearing on this case, which was November 28, 2022, Ms. Kemper contacted Ms. Jensen's office and asked for additional UAs since the prior release. She was informed Mr. Fries may have disclosed a relapse since the UAs were provided. The relapse would have made it impossible to have completed treatment in October because a defendant must show they were clean and sober under the Oregon Administrative Rules for 90 days.

Ms. Lynda Jensen:

Ms. Jensen works for Yamhill Adult Behavioral Health. She provides DUII and outpatient drug and alcohol treatment. She provided treatment to Mr. Fries. She went through what treatment entails and that she reports to the ADSS by filling out form 8053. She agrees there is no place on the form to provide compliance information. Ms. Jensen testified that she was not allowed to provide UAs. She testified that the new form tells her that "they, the ADSS" did not want UA results. Ms. Jensen also testified that the prior form had a space to write compliance information and she did. She was never trained on using the new form but in using it she stopped providing compliance information to the ADSS.

Ms. Jensen testified that Mr. Fries did not have any additional positive UAs after July 15, 2022, he did not self-disclose a relapse to her knowledge, and he completed treatment in October 2022.

Marisha Elkins:

Ms. Elkins is employed with the Oregon Health Authority as a DUII Services Coordinator. She has been in this role over six years. Her responsibilities include being the lead policy analyst in this area, and she works with ADSS and the service providers, a/k/a treatment providers. She attends audits of treatment providers at the request of the certification specialist. She reviews records and policies. She is not a certification specialist. She is not a lawyer and cannot give legal advice. She makes sure the policies are in line with administrative rules. This includes policies around privacy laws, trauma informed services and other topics. She makes recommendations to the certification specialists if there are compliance issues. She reiterates she does not provide legal advice to treatment providers, but she refers them to 42 CFR Part 2 or HIPPA. If the providers have questions or concerns, Ms. Elkins refers them to their lawyer or another resource. She refers treatment providers to these two privacy laws as they apply reporting to an ADSS.

Ms. Elkin's testified the OAR's require treatment providers to report information to the ADSS that complies with 42 CRF Part 2 and HIPPA and describes the reporting requirements. She lists the options that are allowed which are what appear on form 8053. The treatment provider is not required to provide anything else. Anything outside this would be between the court and the treatment providers. She assisted in drafting form 8053 in consultation with the Oregon Department of Justice (DOJ). She rolled this out statewide at direction of management. She testified that anything she does must be approved by her manager or manager above that.

She then testified she provides technical assistance and training to providers statewide. She has trained on the use of form 8053 and reporting requirements in the OARs. She does not provide training on 42 CFR or HIPPA. She denies ever training anyone regarding the application of 42 CFR to reporting. She does not characterize her technical assistance as telling someone how to comply with 42 CFR. because

she is not a lawyer. She does tell treatment providers what 42 CFR says, and form 8053 meets the minimum requirement for their rules.

When asked why she removed the box from form 8053 that provided a space for treatment details, she says she could not remember why it was removed. When asked what additional information was provided on the prior form, she responded that form was implemented in 2019. There was no standardized form before that. She is shown EX 2 which is the memo that went out when the form was "implemented." Ms. Elkins testified the form was created because there were varying degrees of reporting. In reviews they saw violations of redisclosure. OHA wanted to be clear about the minimum requirements. She and others observed in audits there were no ROIs or courts order in clients' files.

She is not comfortable answering if an ROI can cover the release of information under 42 CFR or HIPPA. She says she has no recollection of saying ROIs are coerced if court ordered. She claims to have no recollection claiming ROIs with an electronic signature are invalid, but then stated she knows they are valid.

Ms. Elkins then testified that she has no recollection of telling a treatment provider not to provide treatment details to an ADSS. She said when she gets questions on this, she tells the provider that the form 8053 meets the minimum reporting requirements under OAR 309-019-0195(17). If they get requests that they think is outside 42 CFR or HIPPA they should consult legal counsel. When she is asked about OAR 309-019-0195(17), and that it only addresses the timing of reporting she agrees but then states this section governs what information can be reported.

She says she has no recollection telling anyone that a court does not have the authority to order more information than what is listed in the OAR 309-019-0195. When asked if she has any issue with treatment agencies sending treatment details, her response was agencies should be sending status reports. The status report form does not have more than the minimum necessary under HIPPA and 42 CFR. If a court requires more, with appropriate ROIs, then the information can be disclosed. When asked what the minimum requirements means, she states that both 42 CFR and HIPPA reference the minimum necessary to fulfill the purpose.

She was then asked about issuing a Frequently Asked Questions (FAQ) memorandum on when an ADSS can require a new screening and charge another assessment. Ms. Elkins testified she does not do anything alone. It was an OHA memo, but she drafted it and her manager approved it. She says she has not received direction that this was legally inaccurate. The FAQ says a new screening is not necessary if a defendant is revoked from diversion. This has been the standing policy of OHA from before she worked there. She agrees the FAQ issue came up in a Governor's Advisory Committee on DUII (GAC) meeting from Deborah Ruiz that it needed to be corrected but she has not been directed to make a change by her agency.

On cross examination by Mr. Fries' attorney, she was asked about federal law and Ms. Elkins stated that both HIPPA and 42 CFR Part 2 have the "minimum necessary" clause which states a provider can only supply the minimum information to meet the needs of the disclosure. She lists the options of disclosure under the OARS which includes: has scheduled an appointment, is enrolled, has been discharged or has successfully completed. The status reports limit what can be sent to the ADSS. The OARs do not prevent additional disclosure if there is an ROI or a court order. In the final question, Ms. Elkins testified

that if there was a valid ROI, she would not direct a treatment provider to not give treatment details to an ADSS.

On re-direct, the minimum disclosure language was reviewed. When asked about the phrase and exactly what it said, Ms. Elkins testified she said she was not sure without looking at the language of the statute. When it was pointed out she just testified about what the law on minimum disclosure was, she gave a non-responsive answer stating the principle is the minimum necessary to meet a disclosure requirement. She then testified the form in exhibit 1, OHA Form 8053 was created to meet the minimum necessary information an ADSS is allowed to report under statute to the court.

Ms. Elkins was then asked why an ADSS needs treatment information, and she first provided a non-responsive answer about 42 CFR. When asked again, she states she does not know, that the statutes were passed in 1984 and she could not speak to why the statute was written. When asked why a person with a DUII is sent to treatment, she answered to address their substance abuse issues. Then when asked why then a defendant is supervised by an ADSS, she then again gives an answer about she was not around in 1984 and does not know the reason for the statute.

Then they discuss the OAR 309-019-0195. In her opinion, this rule is specific to treatment, not supervision. When asked for a third time why are people supervised by an ADSS, she responds she does not know the intent of the statute. She then agrees that an ADSS is to supervise treatment compliance. She also agreed the ADSS needs to know information in the check boxes. When asked if the ADSS needs to know if a person is providing positive UA, her answer was "no." When asked if the ADSS needs to know if a person is compliant with treatment, she responded the ADSS needs to know if a person is enrolled.

When asked if an ADSS needs to know UAs and other treatment compliance details to do their jobs, she responded that she could not speak to this because different courts require different information. She has been told by the courts who have requested this information that they need these compliance details. When asked if that is the case, would the treatment compliance details be necessary to meet the need of the disclosure, she stated she would need to ask DOJ.

The court then asked its own questions. First, in relation to OAR 309-019-0195(17) she again agreed it was only a timeline. She agrees there is no rule that the information in 18 is prohibited to be disclosed in the OAR to an ADSS. Ms. Elkins was then asked about Oregon Statutes on DUII's that address disclosures include all detailed information to show compliance or failure and asked how the form 8053 allows for this, she stated "you need to ask DOJ."

Ms. Elkins testified she has not said in a training or in an email that treatment providers cannot provide treatment details like UAs or participation. She went on to state form 8053 meets the reporting requirements in the OARs. She testifies that there was not a standardized form before 2019 and she would be surprised to learn that there was.

Testimony from January 6, 2023

Deanna Kemper took the stand again. Additional exhibits, 3-11, were introduced. EX 3 is the previous form 8053 but also has a box for comments to be provided. This is contrary to Ms. Elkin's testimony that there was no prior form. EX 4 is the draft minutes of the GAC meeting on December 2, 2022. In this document, on page 2 under "Deborah Ruiz" who is a member of the GAC, Ms. Ruiz requested the

opportunity to speak on a FAQ that Ms. Elkins issued statewide just prior to the meeting. Ms. Ruiz pointed out this FAQ was outside the ORS and Ms. Elkins was asked about this. Also, there was an email from the DOJ that responded to this issue. EX 4 is the minutes from the GAC, EX 5 is the FAQ and EX 6 is the public comment to the GAC that Ms. Kemper provided. EX 7 is a letter from Marjory Stanton who is several levels above Ms. Elkins at OHA, and it discusses the issues in these court hearings. In EX 8 is a memo from Ms. Elkins sent out after the one Ms. Stanton sent. EX 9 is the letter from Judge VanDyke dated January 8, 2020, which was sent to OHA and cc'ed Ms. Elkins. EX 10 is a blank 8053 form. EX 11 is the DOJ email for addressing the FAQ issue and pre-dates the GAC meeting.

Testimony from January 30, 2023:

This was a separate hearing on the treatment issues relating to Ms. Stephanie Hartt. Like with Mr. Fries, treatment details were not provided and there was a question why she was taking much longer than 90 days to complete treatment and if she would complete within the petition term date. Mr. William Toland of Cascadia Behavioral Health testified that he was Ms. Hartt's treatment counselor and that she entered in July of 2022. Then there was a note that Ms. Hartt did not finish until November of 2022.

He was asked about specific treatment performance like UA's and attendance. He testified they were keeping track of these things in their progress notes. These were not sent on to ES. He testified that in June of 2022, his boss told him that under a new OAR or ORS they were directed by Marisha Elkins that they were no longer allowed to provide monthly status reports. They could only produce the OHA form that says they are in treatment or not. His boss had him call Ms. Elkins on the phone and Ms. Elkins told him directly that the law had changed in 2019. They have releases for ROIs to give information to the ADSS and there was a conflict between his supervisor and OHA because he believes OHA could not overrule an ROI. He testified he was directed to use the form and that the only way an ADSS could get specific information on a specific client, they must ask for it individually. He testified that these restrictions were not consistent with how he believes he needs to do his job and that he would have reported treatment details.

When asked the exact details of his conversation with Ms. Elkins, he testified to the following. She told him that there was a change, there was an OAR or ORS, and they were not able to give treatment status reports unless this request was in writing. He was clear that Ms. Elkins told him an ADSS could not ask for treatment details status for all their clients every month, it could only be an individual request.

For both defendants, this court finds that they have completed their diversion obligations and their diversions are terminated as successful.

The court finds the testimony of Ms. Kemper, Ms. Jensen, and Mr. Tolland credible. The court finds the testimony of Ms. Elkins not credible because her answers were either evasive or misleading in an attempt to conceal her actions.

Law & Analysis:

ORS 33.096 states "A court may summarily impose a sanction upon a person who commits a contempt of court in the immediate view and presence of the court. The sanction may be imposed for the purpose of preserving order in the court or protecting the authority and dignity of the court." This court was unable to find any case law that comes close to these facts but what is clear is the contemptuous actions must have occurred before this court.

The laws around DUIIs are very important to consider the actions of OHA, Ms. Elkins, and her testimony before this court. There are three relevant statutory provisions and one OAR. For diversion cases, ORS 813.260(1) requires this court to designate an agency to perform our screening interviews. Our county has designated Evaluation Services and has worked with them for many years. ORS 813.260(2) requires the designated agency "shall" report to the court the "defendant's successful completion or failure to complete all or any part of the treatment specified by the screening interview." It goes on to state "[t]he form of the report shall be determined by agreement between the court and the agency or organization performing the screening."

There is a separate statutory provision for DUII convictions. ORS 813.020(1)(b) states that a person convicted of a DUII must undergo a screening evaluation and treatment provided for in ORS 813.021. ORS 813.021(2) states the screening interview must be performed "by an agency or organization designated by the court." Subsection 3 contains very similar language as ORS 813.260(2) for diversion cases. It states the designated agency "shall" make a report "stating the person's successful completion or failure to complete all or any part of the screening interview or of the treatment program the person was referred...." For this discussion, the court will refer to the exact language in ORS 813.260 as both statutes incorporate the same concepts, just ORS 813.021 has additional language relating to the screening interview. Regardless, if a defendant is in diversion or on probation, the agency this court designates shall report the requested information because they are the agency performing the evaluation.

The court did come across OAR 415-054-0510 which lists what an ADSS must document when monitoring the progress of a DUII defendant including: enrollment or failure to enroll, successful completion or failure to complete all or any part of the screening interview or DUII services program. While Ms. Elkins never mentioned this OAR, it is consistent with ORS 813.021 & ORS 813.260. This OAR is inconsistent with OHA form 8053 because the form does not allow for providing information that a defendant has failed to complete all or any part of the DUII services program.

OAR 309-019-0195 contains all the requirements treatment providers must follow and outlines the different levels of DUII treatment. There is DUII Education under section 5 and the higher level, DUII Rehabilitation, under section 7. Section 9 provides that "DUII Service Providers shall use urinalysis testing for use of substances of abuse and it sets a timeline of when those UAs are to be collected along with a minimum list of substances that must be tested for. Why this is all important is pursuant to ORS 813.021(4) and ORS 813.260(2) the ADSS must report "the person's successful completion or failure to complete all or any part of the treatment program..." The treatment program that the ADSS must report is the "failure to complete all or any part" of is the two programs described in OAR 309-019-0195, DUII Education or DUII Rehabilitation. So, by statute the ADSS must report to the court the "failure to complete all or any part of the treatment program" which would include the number of hours and classes proscribed in sections 5 or 7 and the UA results required by section 9.

Section 17 is also relevant to this discussion because Ms. Elkins testified that this section somehow governs the contents of the disclosure. It states:

(17) Division approved DUII Services Providers must report:
- (a) To the Division using the mandated state data system; and
- (b) To the referring ADSS as allowed by HIPPA and 42 CFR Part 2:
  - (A) No later than 30 calendar days from the date of referral;

(B) Every 30 calendar days while enrolled in DUII Rehabilitation;
(C) No later than 14 calendar days from the date of discharge;
(D) No later than seven calendar days from the written request of the ADSS.

Section 17 is a timeline for reporting, it is not instructions for what must be included or excluded in a report. The only limits on the reporting content are that reports must comply with federal law. It also does not prevent additional disclosures. There is no discussion in OAR 309-019-0195 as to what the report must entail which is logical because the content of the report is determined in an agreement between the court and ADSS under either ORS 813.021 or ORS 813.260 respectively.

As Ms. Elkins repeatedly refers to 42 CFR Part 2 and HIPPA for what a disclosure can include, this court will address these also. While Ms. Elkins names HIPPA repeatedly in her testimony, nowhere in any exhibit in this case or her testimony does she point to a specific provision that applies to this situation. Hence, this court had to go and find the relevant provisions which include the following under 45 CFR 164.502 which states:

> (b) Standard: Minimum necessary - Minimum necessary applies. When using or disclosing protected health information or when requesting protected health information from another covered entity or business associate, a covered entity or business associate must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
>
> (2) Minimum necessary does not apply. This requirement does not apply to:
> (i) Disclosures to or requests by a health care provider for treatment;
> (ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;
> (iii) Uses or disclosures made pursuant to an authorization under § 164.508;
> (iv) Disclosures made to the Secretary in accordance with subpart C of part 160 of this subchapter;
> (v) Uses or disclosures that are required by law, as described by § 164.512(a); and
> (vi) Uses or disclosures that are required for compliance with applicable requirements of this subchapter.

What HIPPA ultimately requires is two things. There must be a ROI or some other legal basis for a disclosure and the entity disclosing must use "reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request." Nowhere in HIPPA does it define what this phrase means which is obvious because the limits are determined by what information is required in the disclosure. In this case, Oregon law as described above defines the nature of the disclosure which is "defendant's successful completion or failure to complete all or any part of the treatment specified."

As for 42 CFR Part 2, the disclosure language Ms. Elkins references comes from 42 CFR Part 2.31(5). It states "The purpose of the disclosure. In accordance with § 2.13(a), the disclosure must be limited to that information which is necessary to carry out the stated purpose." Section 2.13(a) reiterates the language that "any disclosure made under the regulations in this part must be limited to that information which is necessary to carry out the purpose of the disclosure." This court is unaware of any definition of the above phrase and this court interprets the phrase as allowing any disclosure of any

information that is necessary to carry out the purpose of the disclosure. What this means is ORS 813.021 and ORS 813.260 define the nature of the disclosure for DUII defendants in treatment.

It should also be noted that 42 CFR Section 2.35 addresses disclosure and redisclosure for individuals involved in a criminal proceeding, which includes diversion and probation. It states that disclosure can be made within the criminal justice system to "monitor a patient's progress." This language makes it clear that this information can be used for the exact purpose this court has ordered. This section does not limit the disclosure to only whether a defendant is in or out of treatment. The phrase "monitor a patient's progress" is consistent with Oregon statutes, this court's order, and the OARs to provide consistent reporting on all aspects of treatment. Further, this section makes it clear that anyone in the criminal justice system who has the need for this information to monitor the individual can access it and includes a non-exclusive list of examples so long as a defendant has signed a complying ROI.

In these cases, there are two separate issues relating to OHA and MS. Elkin's actions. One is Ms. Elkins intentionally obstructing this court's authority to require treatment details including participation and UAs be provided to an ADSS and to this court. The second are specific statements that Ms. Elkins made that are untruthful based on testimony and exhibits which are very troubling. Some of these facts overlap.

OHA and Ms. Elkins' obstruction of this court's lawful authority and orders:

Before addressing these issues, the court needs to point out that in this opinion Ms. Elkins is quoted several times and the sentence ends with a reference to a For the Record (FTR) time stamp. The court has endeavored to be as exact as possible as to the time Ms. Elkins made these statements on December 16, 2022.

Ms. Elkin's testified she was aware that she had been accused of interfering with providing treatment details from this court on multiple occasions and in Clackamas County. This seems to have started in 2019 when Ms. Elkin's testified the OHA 8053 was implemented and was accompanied by a memo she authored. In this case Ms. Kemper testified that Ms. Jensen told her she could not provide treatment details as she could only use the "check the box form" which is 8053. Ms. Kemper and Ms. Jensen both testified that there was a prior version of 8053 that allowed for more information and an area to provide treatment details in a text box.

Ms. Kemper also testified about other misinformation Ms. Elkins is spreading both directly and indirectly. Treatment providers have told her that Ms. Elkins has instructed them to withhold information from ES because ES is acting outside its authority as an ADSS. Ms. Elkins has told both ES directly and treatment providers that she does not believe people who voluntarily enter treatment and people who are court ordered should be treated differently. Therefore, an ADSS should not get information as they are working outside their legal authority and that a treatment provider does not have to disclose even with a valid ROI. Finally, Ms. Kemper has had multiple conversations with Ms. Elkins in this past year where Ms. Elkins has stated that this county's presiding court order is not valid unless there is one in each individual's name.

Ms. Jensen testified that once the new version of 8053 was introduced there was no longer a place to provide compliance information. She also testified that she believed she was not allowed to provide UA results based on this new form. Ms. Jensen made assumptions about the why the changes to 8053

occurred but she was clear the space for writing compliance information was no longer on the form. (Exhibit #3 shows the prior form with the space.)

Ms. Elkins' testimony was an ongoing attempt to avoid her revealing her obvious beliefs and behaviors in relation to this court's authority. She testified that she is not a lawyer and does not give legal advice but then testified she tells treatment providers they only need to provide the information listed on form 8053. She testifies that a treatment provider is not required to report anything else. FTR 3:54-3:55. When asked what would happen if a court order required more, her response was, it is outside her scope. FTR 3:55.

She next testified that she drafted form OHA 8053 and the memo that went with it in 2019 (EX 1 & 2) and states it was in consultation with DOJ. FTR 3:56-3:57. She said she provided technical assistance on how to use 8053. FTR 3:58. She then testified that she trained treatment providers on the form and the reporting requirements in the OAR, but she did not give specific training on 42 CFR or HIPPA because she is not an attorney. When asked if she is stating she has never trained treatment providers on the application of 42 CFR or HIPPA her response was "I don't understand your question... I have ... on application of 42 CFR?" Ms. Elkins then went to state she "I would not say my technical assistance... I would not characterize it that way, no, because I am not an attorney." Then she testified that she tells them what 42 CFR says and that this form specifically (8053) meets the minimum requirements of our rule and if additional information is requested and you are unsure if it is allowable, then she refers them to their attorney or the Legal Action Center. FTR 3:59-4:00.

These multiple statements around form 8053, the relevant OAR's and reference to 42 CFR all show Ms. Elkins' intentional interference with this courts lawful reporting requirements. She stated twice within about 5 minutes that she does not tell treatment providers what can be reported or not but the form, 8053, meets the reporting requirements and a provider "is not required to report anything else." She reiterates this when she testified that "she tells them what 42 CFR says and that this form specifically (8053) meets the minimum requirements of our rule..." This of course is all legally incorrect. OHA does not have a subsection of OAR 309-019-0195 that describes what must be in a report. Ms. Elkins' clearly testified that she thinks section 17 defines the scope of the report but as it is clear from above, it is only a timeline on when reporting must happen, and the reports must comply with 42 CFR and HIPPA.

Ms. Elkins then went on to testify about the modification of form 8053. When asked why she took out the comment box on the form, she said she could not honestly remember and would have to look back to see why the box was removed. FTR 4:00. Then she testified there was no standardized form before 2019. She was given EX 2 which is the memorandum when they revised form 8053 and the purpose of the revision. Ms. Elkins testified that a standardized form was necessary because in compliance reviews various degrees of reporting were happening. She testified that "we saw violations of 42 CF.." and then her testimony changed course and Ms. Elkins stated, "licensing and compliance staff saw violations of redisclosure." They wanted to be clear about the minimum requirements. FTR 4:02-4:03. She then testified that the redisclosure violations were happening because there were no ROIs or court orders in the clients' files. She then did admit she saw violations in clients' files and that "there wasn't a release of information in the client's file allowing the redisclosure of those records and also there was not documentation of a court order allowing those records to be disclosed." 4:03 FTR.

These statements are troubling for multiple reasons. Ms. Elkins testified she has been with OHA for six years, which would mean she was working for them prior to the 2019 revision of form 8053 which she

denies is a revision. The change in 2019 is without question a revision because the prior version is in the record as exhibit 3. The first obvious reason is it is the same numbered form, 8053. Further, EX 3 has a revision date of 03/18 in the bottom right and the new form has a revision date of 2/19 in the same location. Also, the content of both forms is nearly identical except for two major changes along with some formatting differences. The changes are the removal of the comments box in the center and the addition of the reference to 42 CFR Part 2. This is also one of the crossover sections where Ms. Elkins clearly testified untruthfully under oath.

What also is troubling is that Ms. Elkins claims the need for this form stemmed from observed violations of 42 CFR in client treatment files. She specifically stated, "there wasn't a release of information in the client's file allowing the redisclosure of those records and also there was not documentation of a court order allowing those records to be disclosed." There are several fundamental flaws with this statement but are consistent with the misinformation Ms. Elkins has disseminated. First and foremost is, as Ms. Kemper testified, Ms. Elkins told her that this court's presiding court order on disclosure of treatment records was invalid unless it was in each individual's name. Her statement above shows this is what Ms. Elkins believes. There is no reason to be looking for a court order in a client's file unless you believe one is necessary. This shows Ms. Kemper's testimony is accurate because this is what Ms. Elkins has told her. It also shows Ms. Elkins is intentionally obstructing this courts lawful authority and that she has been evasive and intentionally misleading in her characterization of her actions. It is also consistent with the testimony of Mr. William Toland who stated he was told by his superior based on guidance from OHA and Ms. Elkins that the only way an ADSS could ask for treatment details is if they ask for them individually.

This thinking is contrary to how Oregon law works. As the statutes outline above, the court is entitled to a "defendant's successful completion or failure to complete all or any part of the treatment specified by the screening interview." ORS 813.021, ORS 813.260, and OAR 415-054-0510. The Washington County Presiding Judge has issued an order designating ES as our ADSS and a second one entailing the exact disclosures that the ADSSs ROI must provide. There never would be an individualized court order in each defendant's name because it is neither required by law nor would it be practical. Further, on page 2 of Exhibit 2, the 2019 memo implementing the new version of 8053, states that "[d]uii service providers are encouraged to provide their clients the option of signing a release of information for the court when they enroll in services to facilitate any necessary information sharing." The problem with this statement is it ignores the fact that a client by court order must sign an ROI with the ADSS and an additional ROI with the treatment provider is unnecessary. The statement in the memo is a subtle way of saying the ROI from the ADSS is not valid so the treatment provider needs to have their own. Why else would OHA and Ms. Elkins suggest a treatment provider have a defendant sign an unnecessary ROI other than to create confusion around the validity of the ADSS ROI? This has led to the statements that Ms. Kemper has testified about that Ms. Elkins believes the ADSS is acting outside of its authority by forcing defendants to sign ROIs that she believes are invalid. It is clear Ms. Elkins thinks there are specific requirements as to both ROIs and court orders and neither of them are legally accurate.

The second troubling part if this claim is the statement that there were not proper ROIs in the file. As Ms. Elkins has repeatedly testified, she is not a lawyer, how can she interpret what is a proper ROI? Ms. Kemper's testimony shows that even when there is an ROI in the file, Ms. Elkins will find a way to claim it is invalid and therefore does not have to be honored. Her own testimony was, there were not proper ROIs in the file and that she encourages treatment providers to have defendants sign the providers ROIs.

This is contrary to 42 CFR Section 2.35 because this section states that the court and its non-exclusive list like probation officers can have the defendant sign an ROI that provides for redisclosure. As long as a Washington County DUII defendant has signed a valid ROI, which this court requires and ES has them execute, there can never be a violation of redisclosure under 42 CFR part 2. Ms. Elkins testimony and actions show she thinks otherwise and is another avenue in which she is intentionally obstructing this court's lawful authority.

Finally, Ms. Elkins testified the updated 8053 was created in consultation with the Oregon Department of Justice but that assertion seems extremely questionable for several reasons. She continued to reiterate that the OARs provide the standard of reporting and that is based on the nebulous language of 42 CFR Part 2 and HIPPA. Neither of these laws in anyway define what can be in a disclosure, they only limit the disclosure to what is necessary to meet the need of the disclosure. The Federal Government has left this nebulous because the disclosure is defined by the need and that need can differ depending on the context. In Oregon, the scope of the disclosure in the DUII context is determined by the report the ADSS is to supply to the court. Oregon law determines the report's content is defined by an agreement between the court and the ADSS. Despite this, Ms. Elkins repeatedly testified in the hearing that OAR 309-019-0195(17) contains the content reporting standard. This court finds it improbable that a DOJ attorney working in this area would have advised OHA that OAR 309-019-0195(17) was anything more than a timeline to report, that ORSs don't control the nature of the disclosure, or that an ADSS ROI was not sufficient to cover all redisclosure between the treatment provider, the ADSS, and the court.

Ms. Elkin's was then asked a series of questions with answers reminiscent of Oliver North in the Iran Contra Hearings. She was asked if she ever stated an ROI in a court case was invalid because they were coerced. She claimed she had no recollection of this. She was asked if she ever described them as coerced and she gave the same no recollection answer. She was then asked if she described court documents signed by defendants as being coerced and she gave the same answer. She was asked if she thought if an ROI was coerced by a court proceeding it would not be valid. Her response was she would not know how to answer this because she was not an attorney. When asked about her statement that ROIs are not valid with an electronic signature, she again responded she had no recollection of this. She went on to say that she does not think she would have answered about the electronic signature in this manner because she knows it is allowed under 42 CFR. FTR 4:05-4:06. This court suspects that Ms. Elkins came to the realization that an electronic signature was valid only after this court sent a letter to the OHA dated December 6, 2022, where this topic was one of the issues covered.

She was then asked a hypothetical question that if there was a valid ROI like in Mr. Fries case, should a treatment provider provide compliance information? Ms. Elkin's responded she would refer the treatment provider to their legal counsel to determine if the request was lawful because she is not an attorney. FTR 4:07. She admits that she is trained on 42 CFR Part 2 and HIPPA but now claims she does not train on these topics. This is inconsistent with her prior testimony that she provides technical assistance on these topics. She was then asked if she has trained agencies to not provide treatment details or information to an ADSS and her response was she has no recollection of ever doing this. FTR 4:08.

Ms. Elkins was then asked if it would surprise her that there is a common misconception that she is instructing treatment providers to withhold treatment details. She says it does not surprise her because misinterpretation is common where she works, and she gets questions on this issue a lot. When asked

how she responds to questions about reporting treatment details she testified she responds by telling the treatment provider that "the form we've implemented in consultation with the DOJ meets the min... the requirements... reporting requirements under 309-019-0195(17) and that if they receive requests for additional information and they are unsure if falls under their allowable disclosure under 42 CFR or HIPPA" to seek legal advice. FTR 4:08-4:09 Ms. Elkins' statement here is the crux of the situation and how she is clearly directing treatment providers to not provide treatment details because she admitted she tells them form 8053 meets the reporting requirements of OAR 309-019-0195(17). How else is a treatment provider supposed to interpret this direction from their licensing agency?

It is also consistent with the testimony of Mr. William Toland. He testified that he was told by his supervisor that OHA and Ms. Elkins instructed his supervisor that they could no longer provide monthly status reports. They could only provide information to the ADSS if the client was in or out of treatment. Mr. Tolland testified that he then spoke to Ms. Elkins directly and she told him that there was a change in either the OARs or ORSs and they could no longer give out treatment details. Ms. Elkins was specific that an ADSS could not ask for treatment details for all their clients every month. There could only be an individualized request. This of course is not a correct statement of the law. There is no question Ms. Elkins is instructing treatment providers to not provide the treatment details this court lawfully requires. Ms. Elkins is creating this "common misconception" and directing treatment providers that the box options on form 8053 meet the legal reporting requirements and anything else an ADSS requests they need to check with their legal advisors.

Even the statement "check with their legal advisors" shows Ms. Elkins' intent to obstruct this court's lawful authority. Her position is only the information on form 8053 that shows "enrollment and completion" can be lawfully obtained. When she informs a treatment provider that these are the only things that need to be provided and for anything else you need to check with legal counsel, the clear implication is it is not legal to provide the additional treatment details like UAs and attendance.

When asked about OAR 309-019-0195 (17) after it was read into the record, Ms. Elkins does agree this section does not address content just timing. She then goes on to state "that is why in consultation with the department of justice we develop a standardized reporting form." FTR 4:10. Which of course begs the question why OHA needed to revise an existing form except to achieve Ms. Elkins obvious goal of limiting the information that is reported to an ADSS. Ms. Elkins was asked if the form allows treatment providers to provide compliance information Ms. Elkins responded, "it allows them to provide the information statutorily required." "Enrollment and completion." FTR 4:11. When asked if she has ever told anyone a court does not have the authority to order more information that enrollment and completion, she again responds she has no recollection of this. Despite her lack of recollection, her own testimony of only provide "enrollment and completion" shows what she thinks and what she is conveying to the treatment providers when she is providing her "technical assistance."

This again is an incorrect legal interpretation. Ms. Elkins continues to point to OAR 309-019-0195 (17) as the authority for the limits of the disclosure and that while she used the word "statutory" her next sentence of "[e]nrollment and completion" shows she is still pushing this false legal narrative. Nowhere in this conversation or anytime in this hearing does Ms. Elkins acknowledge that the parameters of the disclosure are governed by statute and that statute allows the court to determine the nature of the disclosure.

Ms. Elkins was then asked if a court could request treatment details and her response was if there is a valid ROI, then there is no problem. She then stated the reason form 8053 exists because she wanted to stick to the minimum requirements under HIPPA and 42 CFR. If the court needs this additional information and there is appropriate ROIs, this can be disclosed but because not all courts require this, it is partly why the form exists. FTR 4:13-4:14. Again, this testimony shows Ms. Elkins has continued to share her belief that form 8053 and its limits on disclosure are somehow legally proper.

On cross-examination, Mr. Fries attorney discussed the minimum disclosure principle in federal law and Ms. Elkins confirmed the principle and that the OARS do not prohibit providing more information. On re-direct, Ms. Elkins was asked about the minimum disclosure principle, and she went from endorsing her understanding to back stating she did not know the exact language. 4:26 FTR. The state reads the principle from ex 2, which is Ms. Elkin's own memo, and she deflects and says she not sure and needs to read the text of 42 CFR. She then claims that she did not author the 2019 memo but agrees she has trained people on it. She also agrees she trains people on the text of 42 CFR. She then testified that the form, 8053, "was developed to meet the minimum necessary information required to be reported by the ADSS to the court and statute." 4:28 FTR.

Ms. Elkins went on to testify that the form "was created to provide the minimum necessary information in Oregon Statutes." 4:28 FTR. When asked if the form was created to meet the need of the disclosure her response was "to meet the need of the statute." 4:28 FTR. When it was pointed out to her that she testified that the form was created to meet the minimum necessary disclosure she states she misspoke and that the form was created "to meet the minimum necessary for the statute." 4:29 FTR. Again, her testimony is form 8053 was created to meet the disclosure requirement of statute but she does not point to what statute or how the form meets those requirements.

There was then a bizarre exchange where the state was asking simple questions about why a treatment provider needs to provide information to an ADSS. Ms. Elkins' initial response was non-responsive. She stated, "42 CFR prohibits disclosure of substance abuse disorder or treatment records without a release of information." The state asked again why the treatment provider needed to disclose information to the ADSS. Her response this time was "because it is required in statute." FTR 4:29-4:30. When followed up on why this is necessary her response is "she cannot speak to that. The statute was written in 1984. So, I could not speak to why that statute was written." FTR 4:30. Then she was asked what is the purpose of treatment which she responded to correct an issue and keep people from driving drunk. When then asked why you have these people supervised by an ADSS her response is "[a]gain I would have to refer you to the legislative... I was not around in 1984 when the statute was written." FTR 4:31. She goes on to reiterate she does not know the purpose of the ADSS supervising people.

Then there is a discussion that the ADSS needs to know information to be able to report to the court, to which she agrees. The state then lists off things that the court needs to know starting with; is a defendant engaged or not engaged, whether they have been referred or are ongoing or completed, basically all the check boxes on the form 8053. Ms. Elkins agreed with these. The state then asked, "they also need to know if the person is providing positive UAs, do they not? Her response is "no." When asked if "they need to know if the person is compliant with the treatment" her response is "they need to know if the person is enrolled." When asked if the ADSS, in order to supervise, needs to know if the person is doing what they are supposed to be doing Ms. Elkins responded, "the rules are written for treatment providers, this rule specifically... it is not about the supervision of the client." FTR 4:33.

This part of the testimony sums up Ms. Elkins' clear beliefs and intentions to obstruct this court. She does not believe that an ADSS is entitled to know the UA results that are required under OAR 309-019-0195. Her "no" on the audio is not just an emphatic no, it is a "no" with the intonation that she is horrified that this information would be released. She is clear despite the prior testimony where she repeated an ADSS could have this information with a proper ROI, her belief is that they should not have this information. This line of thinking is consistent with Ms. Kemper's testimony that Ms. Elkins believes that people who are in treatment under court order should be treated the same as a person who is voluntarily in treatment and their information remain confidential. Her further response when asked about treatment was "they need to know if the person is enrolled" which shows MS. Elkins believes the requested treatment information should be withheld from the court.

Further her statement that the rule was created for treatment not for supervision, is not accurate and contradicts her prior testimony that section 17 outlines the reporting timeline a treatment provider must report to the supervising authority, the ADSS. While most of the OAR addresses treatment requirements, it does also address how to facilitate providing information for an ADSS to supervise defendants.

There is no question that Ms. Elkins' "technical assistance" to treatment providers is both more than "technical assistance" but also clear direction to use form 8053 and that is the only information you need to provide. The "no" response to UAs and only "enrollment and completion" shows what she is really telling treatment agencies. Again, as a treatment provider's license depends on OHA certification and Ms. Elkins continually involves herself in the process as she testifies, what else would a treatment provider conclude other that they need to follow her "technical assistance" or lose their certification?

While there are other contradictions in her testimony that this court will not go through, ultimately Ms. Elkins admitted she is aware that she and her agency received communications about her interference from Clackamas County, Exhibit 9, and two from Washington County. Yet she continues to provide "technical expertise" and guidance to treatment providers by telling them not to provide this information despite being told from multiple courts that it is necessary, and the courts have the authority to request it.

What is even more troubling is after this courts hearing on December 16, 2022, the Oregon Health Authority issued a memorandum to treatment providers, ADSSs and presiding judges addressing these exact issues. Exhibit 7. It states OHA is aware of concerns that:

> ...OHA staff are advising OHA certified Alcohol and other Drug Screening Specialists (ADSS) and OHA certified DUII services providers about whether and how to comply with court orders or advising these entities whether they can share information with the courts related to an individual's compliance with court requirements.

The memorandum written by Margie Stanton the Health Systems Division Director on December 23, 2022, goes on to outline the things that OHA will instruct their employees to refrain from doing. There are several points relevant to Ms. Elkins' actions. First, it states that OHA form 8053 is no longer required but optional. The second is "OHA would refrain from providing any guidance to its certificate holders with regard to their interactions with the courts." Finally, the memo states that "OHA will refrain from providing any interpretations of DUII statutes that do not directly authorize OHA to administer the program."

Six days later, on December 29, 2022, Ms. Elkins issued her own memo on these topics. It is two paragraphs but the first is the most important for this discussion. Ex 8. It states:

> In 2019, OHA implemented a standardized form for DUII Service Providers to use when providing reports to the Alcohol & Other Drug Screening Specialists (ADSS) as required in OAR 309-019-0195. The DUII Referral Status Update (OHA form 8053) includes the minimum necessary information for the ADSS to meet their statutory reporting requirements to report a DUII client's successful completion or failed to complete all or any part of the screen treatment program as required in ORS 813.021 and ORS 813.260.

The second paragraph goes on to say the 8053 form is optional and another form could be used to meet the reporting requirements in OAR 308-019-0195(17).

Unpacking Ms. Elkins' December 29, 2022, memo is complicated as there are several layers. The first and foremost is that this first paragraph is without question legal advice. It tells the receivers that while form 8053 is now optional it meets the legal reporting requirements of Oregon Statutes. This alone has two implications for this hearing. It is one of a couple pieces of evidence that contradict Ms. Elkins' testimony that she does not provide legal advice and it also shows she still intends to obstruct this court's lawful authority because this memo makes it clear that it is her legal opinion form 8053 meets the necessary reporting requirements outlined in ORS 813.021 and ORS 813.260. The other issue, which will be addressed below, is this is direct evidence that Ms. Elkins lied under oath to this court.

The second troubling thing about this memo is it is six days after Ms. Stanton's memo and without question is advice or guidance to treatment providers on how to report to the ADSS. The next sentence of Ms. Stanton's memo is OHA will refrain from interpretations of DUII statutes that do not directly authorize OHA to administer its program. While ORS 813.021 and ORS 813.260 do mention OHA, they only reference the appointed ADSS must be licensed by OHA. Neither of these statutes in discussing the ADSS's supervision responsibilities mention OHA in any fashion. It begs the question what Ms. Elkins is doing providing legal advice about statutes that "do not directly authorize OHA to administer its program."

The last issue to take up is the most obvious one. This memo is not only legal advice, but it is again telling treatment providers that while they can use another form, 8053 "still includes the minimum necessary information for the ADSS to meet their statutory requirements...as required by ORS 813.021 and ORS 813.260." Again, this is not legally accurate. As shown above ORS 813.021 and ORS 813.260's language is more expansive than Ms. Elkins flawed misinterpretation. She continues to ignore the language in ORS 813.021(4) and ORS 813.260(2) that states the ADSS will report "the person's successful completion or failure to complete all or any part of the treatment program..." Again, as OAR 308-019-0195 outlines the different treatment programs and that all of them include a specific number of hours and UAs. Oregon statutes require the ADSS to report "failure to complete all or any part of the treatment program" which includes all the requirements under OAR 308-019-0195 including treatment attendance and details and UAs.

Ms. Elkins' untruthful testimony:

There are three specific areas where Ms. Elkins lied under oath to this court. There are a couple of other suspect areas but three areas where she is clearly untruthful are: 1) she does not provide legal advice, 2)

she does not instruct treatment providers to not provide treatment details to the court via the ADSS, and 3) there was no prior version of form 8053.

The last is the easiest to deal with as EX 3 is the prior version of form 8053. According to its notation this version was created on 3-18. Both Ms. Jensen and Ms. Kemper testified that this form was in use before March of 2018. This form has the box for comments that was eliminated by the 2019 revision. Ms. Elkins testified that she has been in her current position with OHA for six years when she took the stand in December 2022. This means she was employed with OHA prior to the revision of 8053 in February 2019. There is no way she did not know the prior form existed. This court can see Ms. Elkins making the claim based on her testimony that "there was no standardized form" prior to 2019 but the 2018 version is without question a standardized form that both Ms. Kemper and Ms. Jensen testified had been in use for years.

Ms. Elkins' assertion that she does not provide legal advice, only "technical assistance," is clearly untrue. There are several pieces of evidence that she does way more than this. Legal advice is defined as "recommendation regarding a decision or course of conduct." *State ex rel. Oregon Health Sciences University v. Haas*, 325 Or. 492, 504 (1997). The discussion of her memo of December 29, 2022, above shows Ms. Elkins does in fact provide legal advice. She has taken her beliefs about statutes and OAR's and put them in a document and recommends the course of conduct to the treatment providers that using form 8053 meets the necessary statutory requirements. This is irrefutably legal advice. In addition, Ms. Elkins' testimony that no UAs and only "enrollment and completion" can be provided to an ADSS shows she is instructing treatment providers during her "technical assistance" what they can legally provide to the ADSS which is also legal advice. This is what Ms. Kemper has heard from treatment providers and Mr. Tolland heard both indirectly and directly from Ms. Elkins. Telling Mr. Tolland, a "ORS or OAR" prohibits the dissimilation of treatment details is recommending a course of conduct which is providing legal advice.

The second instance of proven legal advice is with the FAQ she issued on November 23, 2022. Exhibit 5. In her testimony Ms. Elkins stated she issued a new FAQ relating to screenings and referrals. FTR 4:17. She says she did not do this alone. She drafted it. It is a part of her normal process. It was approved by her manager. She denies she was directed to retract this FAQ as being legally incorrect. She agrees the memo she wrote said that if a person has already done a screening, a new one was not necessary. She claims that was the standing policy of the agency before she came into the position. FTR 4:19. When asked why she needed to do an FAQ if this had been standing policy, her response was, there were a lot of new ADSSs and she was getting a lot of questions. She wrote this to cut down on the number of emails and phone calls she was getting.

In looking at Exhibit 5, it is also legal advice. It instructs an ADSS as to when they can charge the statutory allowed $150 screening fee. The document Ms. Elkins wrote goes on for a couple pages outlining scenarios as to when an ADSS can charge the screening fee a second time. The scenarios lay out fact patterns that can occur and then instructs an ADSS if they can charge a second statutory screening fee, i.e., this is how the law applies to these specific scenarios. This also legal advice.

What is more troubling Ms. Elkins is wrong about several of the scenarios, specifically the one on the bottom of page 4 and the next two on page 5. In all three of those scenarios a new screening fee can be charged. All the scenarios in the FAQ where Ms. Elkins recommends a course of conduct based on Oregon law is legal advice. What is most troubling is Exhibit 11 which is an email from Senior Assistant

Attorney General Deena Ryerson dated November 29, 2022, which addresses this FAQ and its legal inaccuracies, and it state in the last line "[i]f Marisha takes issue with you all keeping the status quo – and following the law- please refer her to me." The clear implication of the statement is consistent with this court's decision, Ms. Elkins is not only providing legal advice, but it is advice to not follow the law. It is also terribly troubling that DOJ is aware of Ms. Elkins providing inaccurate legal advice and yet it is not clear if they have taken action to address it.

The final area where Ms. Elkins lied is that she does not instruct treatment providers to not provide treatment details to ADSS to report to the court. While her testimony on this subject was first, she did not recollect ever telling a treatment provider to not provide treatment details, she went on to testify she would never do this. She repeated that a treatment provider could provide treatment details with a valid ROI. Both Ms. Kemper and Mr. Toland testified that Ms. Elkins has told treatment providers that they cannot provide UAs and other treatment details. In Mr. Toland's instance, it was even legal advice as she told him there was an OAR or ORS that prevented giving this information without an ROI. Ms. Elkins' own testimony was when asked if "they need to know if the person is compliant with the treatment" she responded, "they need to know if the person is enrolled." All of this shows Ms. Elkins' willingness to instruct treatment providers to obstruct this courts orders to provide treatment details.

Ms. Elkins' testimony that an ROI can be used to get UAs and treatment details is just a ruse to try and attempt to show she is not obstructing this court's authority. Ms. Kemper testified that she has been told by treatment providers they cannot provide treatment details because Ms. Elkins has told them ES is acting outside of their statutory authority. Also, Ms. Kemper testified that Ms. Elkins repeatedly told her that this court's Presiding Order that requires all DUII defendants to sign an ROI is not valid unless there was an individual order for each defendant. Ms. Elkins also told Ms. Kemper that this court's orders are invalid and hence the ROI a defendant is required to sign are invalid. So, while Ms. Elkins testified before this court that a valid ROI can get the details this court is legally entitled, the reality is she is telling treatment providers the ADSS ROIs are invalid and do not have to be honored.

Finally, her testimony that the law only allows the reporting of the listed information on form 8053 and her specific testimony that UA's and participation are not things that can be reported, only enrollment and completion, shows her clear intent to obstruct this court's lawful authority. Her continued testimony that she does not interfere with this court's lawful authority and reporting from the ADSS is untruthful. Her testimony she does not instruct treatment providers to not provide UAs and treatment details to an ADSS is not credible. Exhibits 7, 9 and the two letters referenced from this court would not exist if Ms. Elkins was not asserting her will as the will of the OHA and directing treatment providers to not provide treatment details to the Washington County ADSS, Evaluation Services.

Order:

While the two defendants are terminated from diversion successfully, these cases will remain open to address Ms. Elkins' and OHA's on going actions.

The Oregon Health Authority and Ms. Elkins individually are being held in Summary Contempt for intentionally interfering with this court's lawful authority to obtain UAs and treatment details as allowed under Oregon Law. The testimony about their actions occurred in the "immediate view and presence of this court." ORS 33.096. Contempt is defined as "[d]isobedience of, resistance to or obstruction of the court's authority, process, orders or judgment." ORS 33.015. It is without question through her

testimony, Ms. Elkins on behalf of the OHA has intentionally resisted and obstructed this court's authority and orders as shown above. Ms. Elkins and her attorney from the DOJ have already been informed of this verbally at the hearing on January 30, 2023, where she did not testify.

As this court has the inherent Remedial Contempt power to impose remedial or punitive sanctions, the court is outlining the following consequences. ORS 33.025. If this court in the future, after a show cause contempt hearing, determines that OHA and or Ms. Elkins obstructed or interfered with this court's lawful authority or orders, the court will issue the following punitive sanctions:

OHA will be fined $10,000 for each instance.

Any action Ms. Elkins takes on behalf of OHA will result in 5 days in jail for each instance.

Pursuant to ORS 33.096, this court orders OHA and Ms. Elkins to cease and desist with any and all efforts to interfere and obstruct this court's authority and orders but also to follow its own memorandum written by Marjorie Stanton on December 23, 2022. This memorandum is incorporated into this order by reference and is attached.

Sincerely,

Brandon M. Thompson
Circuit Court Judge
Washington County, Oregon