# STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

**SUPERIOR COURT DIVISION**

**COUNTY OF WAKE 11 CRS 000000000**

**STATE OF NORTH CAROLINA )**

**) MOTION FOR DISCLOSURE OF**

**vs. ) ANY NOTES AND/OR OTHER**

**) RECORDATION OF**

**JOHN DOE, ) PSYCHIATRIC/PSYCHOLOGICAL**

**) TREATMENT OF PROSECUTION**

**) WITNESSES**

**Defendant. )**

**NOW COMES**, the Defendant, ***John Doe***, by and through his undersigned counsel, Maitri “Mike” Klinkosum, Attorney at Law, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I §§ 19 and 23 of the North Carolina Constitution, N.C.Gen.Stat. §§ 8-53 and 15A-901, et. seq., ***Brady v. Maryland***, 373 U.S. 83 (1963) and its progeny, ***Pennsylvania v. Ritchie***, 480 U.S. 39,

107 S.Ct. 989, 94 L.Ed.2d 40 (1987), ***Love v. Johnson***, 57 F.3d 1305 (4th Cir. 1995), ***Chavis v.***

***N.C.*** 637 F.2d 213 (1980), and ***State v. Hunt***, 64 N.C.App. 81, 306 S.E.2d 846 (1983) for an Order commanding the production of any notes, memoranda, and/or any and all recordation of any and all psychiatric and/or psychological treatment and/or counseling sessions of the prosecuting witnesses, identified in the indictments as L.G. and N.F. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

1. The Defendant is charged with three counts of misdemeanor child abuse.
2. The Defendant was indicted for the above-referenced charges on March 20, 2012.
3. These matters are scheduled for trial during the week of August 27, 2012.
4. These matters are related to civil/family court litigation, which has taken place in Wake County over the course of several years, involving the Defendant and the two minor children alleged to be victims in the criminal charges before the Court.
5. The Defendant filed a ***Request for Voluntary Discovery (Alternative Motion For Discovery)*** on May 4, 2012, after being retained to represent the Defendant in the above-referenced charges.
6. The prosecution has provided the defense with discovery in these matters, with the latest disclosure being received from the prosecution on July 27, 2012.
7. Upon information and belief, the prosecution witness, identified in the indictments as L.G., has been treated by one or more mental health professionals as a result of

the aforementioned civil/family court litigation and/or the allegations as set forth in the indictments.

1. Upon information and belief, the prosecution witness, identified in the indictments as N.F., may have been treated by one or more mental health professionals as a result of the aforementioned civil/family court litigation and/or the allegations as set for the in the indictments.
2. Upon information and belief, the records and documentation of the aforementioned mental health professionals have not been made available to the prosecution at this time and, therefore, have not been available to the prosecution for disclosure to the defense pursuant to Article 48 of the North Carolina General Statutes.
3. Upon information and belief, there are no eye witnesses to the alleged incidents as set forth in the indictments.
4. Upon information and belief, the only first-hand information related to the allegations in the indictments is derived directly from the aforementioned prosecution witnesses.
5. As the prosecution witnesses’ ability to recall and narrate the events as alleged in the indictments is at issue in these matters, the mental health of the prosecution witnesses is proper grounds for cross-examination. In ***State v. Williams***, 330 N.C. 711, 412 S.E.2d 359 (1992), the Supreme Court of North Carolina stated:

Where, as here, the witness in questions is a key witness for the State, this jurisdiction has long allowed cross-examination regarding the witness’ past mental problems or defects. As stated by Chief Justice Stacy: ‘The denial of any impeachment [as to mental defects] of the State’s only eye witness to the fatal assault necessitates another hearing. It is always open to the defendant to challenge the credibility of the witness offered by the prosecution against him. (citing ***State v. Armstrong***, 232 N.C. 727, 728, 62

S.E.2d 50, 51 (1950)).

1. In ***Chavis v. North Carolina***, 637 F.2d. 213 (1980), the United States Court of Appeals for the Fourth Circuit held that the State’s suppression of a crucial witness’ psychiatric record, after the defense’s sufficient and specific request for ‘psychiatric and other reports which might tend to reflect on the credibility or competency of any prospective witness, denied the defendants the due process of law and invalidated their convictions.
2. N.C.Gen.Stat. § 8-53, which is a statute designed to protect communications between physicians and patients, specifically includes a provision allowing the court to compel disclosure of medical records if, in the court’s opinion, “disclosure is necessary to a proper administration of justice.
3. Because the mental health and/or illness/defects of a witness is grounds for cross- examination, the Defendant would be prejudiced in his opportunity for effective confrontation and cross-examination if he were not allowed access to the mental health records of the prosecution witnesses, in order to prepare for cross- examination; said records being any notes, memoranda, and/or recordation of any and all treatment sessions, counseling sessions, and communications between the prosecution witness and any mental health professional(s) concerning the allegations in these matters.
4. Whereas the prosecution witnesses in these matters are crucial witnesses for the prosecution and whereas their credibility and reliability as witnesses is at issue, due process requires that the Court order the disclosure to the defense of any notes, memoranda, and/or recordation of any and all treatment sessions, counseling sessions, and communications between the prosecution witnesses and any mental health professionals concerning the allegations in these matters..
5. In the alternative, the Court should order the disclosure of any notes, memoranda, and/or recordation of any and all treatment sessions, counseling sessions, and communications between the prosecution witnesses and any mental health professionals concerning the allegations in these matters to the Court. The Court should then conduct an in camera inspection, pursuant to ***Pennsylvania v. Ritchie***, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987), ***State v. Bailey***, 89 N.C.App. 212, 365 S.E.2d 651 (1988), and ***State v. Hardy***, 293 N.C. 105, 235 S.E.2d 828 (1977), disclose to the defense any favorable and material evidence, and seal the aforementioned documentation in the court file for possible appellate review.

**WHEREFORE,** the Defendant respectfully prays unto this Honorable Court for the following relief:

1. That the Court make inquiry as to the identity if any and all mental health professionals who have examined and/or treated the prosecuting witnesses in relation to the aforementioned civil/family court litigation and require the prosecution to disclose the identity of said mental health professionals to the defense, to the extent that information has not been previously disclosed to the defense; and
2. That the Court enter an Order commanding any mental health professionals who have examined and/or treated the prosecuting witnesses to disclose to the defense any notes, memoranda, and/or recordation of any and all treatment sessions, counseling sessions, and communications between the prosecution witness and any mental health professionals; or
3. In the alternative, that the Court order the disclosure of any notes, memoranda, and/or recordation of any and all treatment sessions, counseling sessions, and communications between the prosecution witnesses and any mental health professionals concerning the allegations in these matters (which have not already

been disclosed to the defense via discovery procedures) to the Court and that the Court then conduct an in camera inspection, pursuant to ***Pennsylvania v. Ritchie***, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987), ***State v. Bailey***, 89 N.C.App.

212, 365 S.E.2d 651 (1988), and ***State v. Hardy***, 293 N.C. 105, 235 S.E.2d 828

(1977), disclose to the defense any favorable and material evidence, and seal the aforementioned documentation in the court file for possible appellate review ; and

1. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the 3rd day of August, 2012.

***TIN FULTON WALKER & OWEN, PLLC***

By:\_

***Maitri “Mike” Klinkosum*** Attorney for the Defendant State Bar No.: 25052

Tin Fulton Walker & Owen, PLLC 127 W. Hargett Street, Suite 705

Raleigh, NC 27601

Telephone: (919) 720-4201

Facsimile: (919) 720-4640

Ema[il: mklinkosum@tinfulton.com](mailto:mklinkosum@tinfulton.com)