IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

Defendant.

**MOTION FOR DISCLOSURE OF MENTAL HEALTH**

**RECORDS OF [*witness name*]**

Now comes Defendant, [*defendant’s name*], by Counsel, [*counsel’s name*], and moves the Court, pursuant to West Virginia Code § 27-3-1(b)(3) and Syl. Pts. 1-3, *State v. Roy*, 194 W.Va. 276. 460 S.E.2d 277 (1995), to conduct an *in camera* review of the mental health records of [*witness’s name*], a witness for the State of West Virginia in the trial of this case. Defendant further moves that, should the Court determine that these records are relevant to the witness’s character for truthfulness, they be disclosed to counsel for the parties. In support of this motion, the Defendant asserts the following.

1. That [*witness’s name*] is a material witness for the State of West Virginia;
2. that [*witness’s name*] has undergone counseling or treatment for [*specify nature of mental illness, disease or defect*] at [*specify name of facility or treating physician*];
3. that [*name of facility or physician*] currently maintains records detailing the present mental condition of [*witness name*];
4. that, due to the nature of the witness’ impairment, these records pertain directly to the witness’ ability to understand and accurately report the events that they allegedly witnessed;
5. that the issues presented by the witness’s impairment pertain not only to credibility, but to the reliability of the witness’s observations;
6. that the witness’s testimony is among the most important evidence to be presented at trial;
7. that, under West Virginia Rule of Evidence 401, any evidence which would make a fact in issue more or less likely is relevant;
8. that the mental health records pertaining to the witness’s impairment make their observations to be more or less likely to be accurate, and are thus relevant;

Accordingly, for the reasons stated above, Defendant moves that the Court thus conduct an in camera review of the witness’ mental health records to determine the probative nature of the facts contained within pursuant to Syl. Pt. 2, *State v. Roy*, 194 W.Va. 276. 460 S.E.2d 277 (1995).

Dated this \_\_\_ day of [*month, year*].

[*defendant*],

By Counsel

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*counsel name*] [*bar number*]

[*address*]

[*phone number*]

[*email address*]

Counsel for Defendant