

6/4/2026

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

Clerk, U.S. District Court
District of Montana
Billings Division

In re Subpoena, for Dr. Mark Ibsen

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Case No. MC-26-4-BLG-SPW

GJ-2023R00295-1 and -2

EMERGENCY MOTION

TO QUASH A DEFECTIVE, UNREASONABLE & OPPRESSIVE DEA SUBPOENA, DATED MAY 8, 2026 (Ex 27 attached), RETURNABLE ON A SUNDAY, JUNE 7 2026, SEEKING THE SAME DOCUMENTS ALREADY PRODUCED ON SEPTEMBER 11, 2025 (see Exs 14, 15, 16, 17, 18 and 19) TO THE GRAND JURY, TO THE US ATTORNEY AND TO THE DEA; THIS DEA REQUEST FOR THE SAME DOCUMENTS IS NOT THE ONLY EXAMPLE OF DOJ’S HARASSMENT OF DR. IBSEN’S PATIENTS AND HIMSELF¹

COMES NOW John P. Flannery, Esq., of the Virginia law firm of Campbell Casto Clark, P.C.,² appearing *pro hac vice*, to move this Honorable Court, in reliance on Rule 17(c)(2) of the Federal Rules of Criminal Procedure, to quash a fatally defective DEA administrative subpoena, as unreasonable and oppressive, calling for the production of the same documents already supplied on

¹ Mr. Flannery is preparing a *pro hac vice* motion for this successor motion to quash the government’s most recent administrative subpoena.

² Mr. Flannery’s appearance, *pro hac vice*, was admitted in this matter when Dr. Ibsen, by counsel, challenged the earlier grand jury subpoena, now subject to a review because of a contradictory administrative subpoena.

September 11, 2025, in response to a Grand Jury subpoena filed with the participation and knowledge of the US Attorney and of DEA, more than that, this administrative subpoena is invalid for a variety of reasons including failed service, harassment and apparently a selective and vindictive investigation of Dr. Mark Ibsen; in support of this motion, we state further as follows:

1. The administrative subpoena states in relevant part that “failure to comply with this subpoena will render you liable to proceedings in the district court ...” See Ex. 27. We agree that the apt jurisdiction for A Title III review. There is no reason to comply with this administrative subpoena, for the reasons stated herein, and that’s why we are here because this subpoena is fatally defective. Presumably we could do nothing and the subpoena would be rendered a nullity because, by the terms of the subpoena, we have already provided the requested patient files.
2. DEA Diversion Investigator Heidi S. Crater issued this administrative subpoena despite the fact that she participated in the early production of these same patients’ files in response to a grand jury subpoena.
3. The early grand jury subpoena encompassed 22 patients and among those 22 patients are the same 5 cited by DI Crater (See Exs. 26, 27; compare with Exs. 1-4, 5, 6, 7, & 14).

4. DEA agent Joseph Osborne and DEA DI Crater participated in the original production of the five patients requested anew.
5. As a sample we have included e-mails reflecting the gathering of this information for the earlier grand jury subpoena and who participated in the e-mail traffic, namely DEA S/A Osborne and S/A DEA DI Crater. See Exs. 1(Osborne), 9 (Osborne), 11 (Osborne/Crater), 12 (Osborne/Crater), and 16 (Osborne/Crater).
6. The subpoena cites 21 USC Section 876 as the authority to issue a subpoena, but 21 USC Section 876(b) provides for the service of such a subpoena by personal service; and that was not done here; needless to say, we did not waive personal service, and there is no agency relationship that permits service otherwise.
7. The subpoena states it is returnable on June 7, 2026 at 5 pm. June 7th is a Sunday.
8. The subpoena provides that on that date at that time, on Sunday, the respondent should appear at 2970 King Avenue, West Billings, MT 59102. This is somewhat “inconvenient” to a resident of Helena.
9. The subpoena says that the respondent should appear to testify and produce records. DEA DI Crater is, however, indifferent to whether the respondent testifies or not. While asking for both, S/A Crater is satisfied

if Dr. Ibsen just tenders the documents (already tendered and subject to an agreement that found that submission sufficient).

10. I am somewhat confident that no AUSA or anyone else, instructed and experienced in the law, reviewed this “subpoena” before its “release.”

The most generous interpretation is that the S/A Crater ignored what she knew and filed this document anyhow.

11. Perhaps the worst of it is for DEA’s DI Crater to issue this subpoena when DI Crater participated in the litigation over a subpoena duces tecum by the grand jury that resulted in the production that DI Crater seeks to repeat anew. It took months to supply the original documents, if the other errors in this administrative subpoena were not of concern, had the documents already been produced, they would take weeks. But, as we’ve said, DEA and the US Attorney have these documents.

12. The enormous breadth of the original grand jury document demand was for “any and all records ... [for] any patients of Dr. Ibsen,” (thereby demanding patient files and confidential information on an estimated 200,000 patients - going back to 1980)(about 45 years ago); more than that, the U.S. Attorney, at the outset, wanted all of the patients’ medical records - “all medical records, patient files, medical imaging, lab reports and identification documents ...”

13. That request was not limited in time nor the number of patients.
14. But the parties soon learned and agreed we should set a date certain, that was more recent, and we did. A second grand jury subpoena was issued, limiting document production to the grand jury starting with December 1, 2022 (See Ex. 7).
15. It was still a big job, so we discussed how to winnow that down and the parties agreed to identify and limit production to 22 patients counting forward from December 1, 2022 (See Ex. 14).
16. It was a difficult undertaking and took from about April 2025 to September 2025 to complete the agreed production.
17. Comparing the list of 22 patients from the grand jury subpoena with those requested by the administrative subpoena of DI Crater reveals they already have what was asked anew. We prepared a chart showing the overlap of the 5 patients requested anew drawn from the earlier production of 22 patients. See Ex. 26.
18. The Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) generally prefers notice to any patient so each patient may consent (or not) to any request to receive the patient’s private and confidential medical records. For example, 45 CFR Section 164.512 (c),

(e) and (f), suggests a judge is favored over a clerk of court, to review any subpoena to produce a patient's medical information (PMI).

19. The DEA's conduct of its investigation, separate and apart from this bogus administrative subpoena suggests a pattern of misconduct that the US Attorney and this Court should not ignore; in other words, there are serious questions about the DEA having any access to any patient.

20. This is not an instance of hyperbole.

21. We have one very dramatic example, involving a patient, David Fenn, suggesting the DEA is engaged in a "fishing expedition," a dragnet among a sea of patients' confidential information, in search of a legitimate "investigation."³

22. As a former federal prosecutor, I understand what it means to find witnesses of misconduct. But there's a right way and a wrong way to do this.

23. On February 10, 2026, AUSA Paulette Stewart confirmed that there was an arrest of David Fenn, a chronic pain patient of Dr. Ibsen, returning to California, stopped at the airport by the PD, tossed for "evidence" and there was a "seizure" of his belongings.

³ One reference in the original grand jury subpoena says, if we did disclose this document request, that "could impede this investigation. (underscoring supplied)" There is similar language in this administrative subpoena. Plainly, this could not be read to question disclosing this request to the court.

24. On information and belief AUSA Stewart told us what she was told by the DEA Agents.

25. The Montana Agents conduct was something else.

26. In truth and fact, the items “seized” from Mr. Fenn when he disembarked the plane to return home were several - Mr. Fenn’s pain medication, his phone, computer and carryon bag.

27. It turns out that Mr. Fenn was stopped because of the cooperation between the San Mateo PD, and at least two Montana DEA Agents, before Mr. Fenn returned home to California.

28. On February 10, 2026, in response to our correspondence, AUSA Stewart said only that the seizure was not at the request or direction of DEA.

29. I accept what has been said but it’s mistaken.

30. The San Mateo PD has since admitted in court in testimony on the witness stand that this arrest of Mr. Fenn was done because of the PD’s cooperation with the DEA.

31. Mr. Fenn’s meds were prescribed, and were intended to relieve Mr. Fenn’s chronic unremitting pain suffered when he is without the medications that the government seized. He was put at risk for this bogus stop to seize.

32.Mr. Fenn has been taking these prescriptions for years and never sold or distributed any pill to anyone else. Nor has any evidence been produced to show otherwise.

33.Prosecuting a person who is ill who has not committed a crime is cruel and unusual when the person is prosecuted for the medicine he takes. *Compare Robinson v. California*, 370 US 660 (1962)(It is unconstitutional for a state to punish a defendant for drug addiction, which is a status rather than an act, when the defendant has not engaged in any illegal conduct involving drugs in the state; a treatment for pain is no different).

34.Two Montana DEA officers were in San Mateo when Mr. Fenn was detained at the airport.

35.The San Mateo PD Officers testified that they knew Mr. Penn was arriving by plane and they were there waiting for him.

36.On information and belief, San Mateo PD had an agreement with the Montana DEA Agents beforehand.

37.They stopped Mr. Fenn at the airport and took him to a venue within their local jurisdiction.

38.To confirm or deny this happened, as I'm now presenting our concerns about this "sting," as a former federal prosecutor, I would run down the

agents' travel requests and expenses to go to California, demanded their 6s (DEA Reports of Investigation), at least as a first step, to set an evidential foot hold to conclude what actually happened.

39. Unlike what the government said, the Montana DEA officers worked with San Mateo PD and conferred with and coordinated charging decisions and efforts to question Mr. Fenn.

40. While in custody, the San Mateo PD repeatedly assured Mr. Fenn that the likely charge he was facing was a misdemeanor DUI. But he was not impaired.

41. But that "proposed" charge changed after the San Mateo PD allowed the Montana DEA Officers alone to meet and debrief Mr. Fenn.

42. The Montana DEA Agents who were present were:

a. S/A Anne Frankenburger, 406-855-9332, and

b. S/A Bill Brew, 406-672-6820

43. On information and belief, both Agents questioned Mr. Fenn, read Mr. Fenn his *Miranda* rights, and they made an audio recording of the interview.

44. Mr. Fenn was asked a lot of questions, and, to the extent Mr. Fenn responded, he said, in words or substance, "You guys have only one job and one desire, and that is to find me guilty, and why would I help you."

45.SA Frankenburger responded, “We’re not after you, we’re not trying to arrest you.” That says it all.

46.Most of the questions were by SA Franken Burger.

47.SA Brew did, however, repeatedly ask if Mr. Fenn met with Dr. Ibsen.

48.Mr. Fenn volunteered that surely the patient records that the DEA has are the most reliable way to know that.

49.SA Brew said, “What if the records are false?”

50.Mr. Fenn said, “That’s ridiculous.”

51.The DEA Agents left the conference room and talked to the San Mateo PD Officers.

52.They conferred for about 20 minutes.

53.On information and belief, before the meeting with DEA Agents, the talk had been limited to a misdemeanor DUI, afterwards the charges naming Mr. Fenn were six felonies although Mr. Fenn distributed no prescription medicine to anyone else.

54.We wrote the US Attorney, demanding all communications, digital and otherwise, for the San Mateo PD and the Montana DEA Officers including others in Montana who were part of this “sting” operation, all the memos, text messages, phone call nos. and dates and times, records of calls made, tape recordings, interview recordings, all of it to be produced.

It relates directly to the investigation of my client, Dr. Ibsen as that was the purpose of this stop for Mr. Fenn. These materials have not been forthcoming.

55. “Spoliation” refers to the intentional destruction or alteration of evidence relevant to ongoing or anticipated civil or criminal litigation. This concerns us given what DEA has done to date. Courts may impose sanctions for spoliation, including contempt, adverse inference instructions, dismissal of claims, monetary penalties, and remedies styled to the offense uncovered. Notable cases that do a deep dive into the working and consequences of “losing” or “deleting” evidence are the litigated progeny that followed upon *Zubulake v. UBS Warburg* and *Residential Funding Corp. v. DeGeorge Financial Corp.*, which established the standards at the outset for spoliation and sanctions. This incident in California should prompt a hearing on DEA’s misconduct.

56. There were 6 felony charges lodged in court against Mr. Fenn, involving “drugs” that were, in truth and fact, “prescriptions,” though they were treated in the charging documents as if possessing the prescriptions could constitute intent to sell.

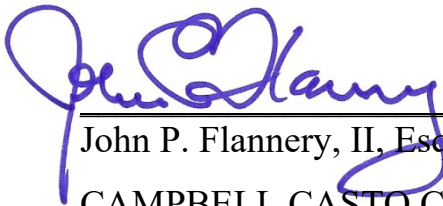
57. The San Mateo Court dismissed the 6 felony charges because there was no probable cause.

58. The local Judge said she “could not believe this case, never seen a case like this in my life. You (the PD) have his [Mr. Fenn’s] phone, his blood, everything, his laptop, and you have ‘nothing’ (underling supplied)”

RELIEF REQUESTED

WHEREAS, based on the motion to quash herein, the arguments made, and the exhibits attached hereto, we respectfully request, at the least, that this Honorable Court grant our motion to quash the administrative subpoena, and grant such other relief as this Court deems fit and just; in the alternative we seek a stay pending this motion.

RESPECTFULLY SUBMITTED,



John P. Flannery, II, Esq. (VSB 22742)

CAMPBELL CASTO CLARK, PC

1602 Village Market Blvd., Suite 225

Leesburg VA 20175

Tel: (703)771-8344

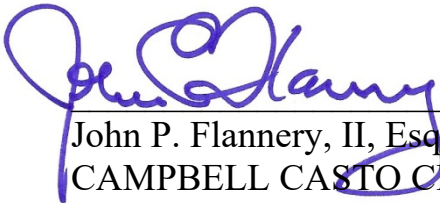
Cell: (202) 365-5060

e-mail: jonflan@aol.com

Lead Counsel, appear *pro hac vice*

CERTIFICATE OF SERVICE

I certify that the foregoing motion, with exhibits, has been forwarded on June 4, 2026, to Paulette Stewart the AUSA responsible for this matter; her office is located at 901 Front Street, Suite 1100, Helena, MT 59626 (e-mail – paulette.stewart@usdoj.gov) we have forwarded a copy of the motion to quash and exhibits to AUSA Stewart by e-mail this day, given the urgency of the matter so it may be considered before Sunday, June 7, 2026.



John P. Flannery, II, Esq. (VSB 22742)
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e-mail: jonflan@aol.com
Lead Counsel, appear *pro hac vice*



From: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>
Sent: Tuesday, April 1, 2025 10:25 AM
To: Dr. Ibsen@drmark406.com <dmi@drmark406.com>
Subject: Grand Jury Subpoena for medical records

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

for the

District of Montana

GJ-2023R00295-1

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

Dr. Mark 406
To: 27 Neil Ave #103
Helena, MT. 59601

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: James F. Battin Courthouse, United States District Court
2601 2nd Ave. N.
Billings, MT. 59101

Date and Time:

April 16, 2025 - Documents Only

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

Any and all medical records, patient files, medical imaging, lab reports, and identification documents that refer to any patients of Dr. IBSEN who were prescribed or dispensed controlled substances.

Although not required, we would request that you not disclose the existence of this request. Any such disclosure could impede the investigation being conducted.

Date: 03/21/2025



CLERK OF COURT Tyler P. Gilman

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Michael A. Kakuk
Assistant U.S. Attorney
901 Front St., Ste. 1100
Helena, MT. 59626
michael.kakuk@usdoj.gov

406-437-5120

EXHIBIT

2

AJ 110 (Rev. 05/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

for the

District of Montana

GJ-2023R00295-1

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

Dr. Mark 406
To: 27 Neil Ave #103
Helena, MT, 59601

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you officer allows you to leave.

Place: James F. Battin Courthouse, United States District
2601 2nd Ave. N.
Billings, MT, 59101

You must also bring with you the following documents, if applicable:

**ANY AND ALL RECORDS ...
[FOR] ANY PATIENTS**

Any and all medical records, patient files, medical imaging, lab reports, and identification documents that refer to any patients of Dr. IBSEN who were prescribed or dispensed controlled substances.

Although not required, we would request that you not disclose the existence of this request. Any such disclosure could impede the investigation being conducted.

Date: 03/21/2025



CLERK OF COURT Tyler P. Gilman

T. Gilman
Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Michael A. Kakuk
Assistant U.S. Attorney
901 Front St., Ste. 1100
Helena, MT, 59626
michael.kakuk@usdoj.gov

406-437-5120



U.S. Department of Justice

United States Attorney
District of Montana

EXHIBIT

3

Michael A. Kakuk
Assistant U.S. Attorney901 Front St., Suite 1100
Helena, Montana 59626

406-457-5120

Dr. Mark
ATTN: Mr.
27 Neil A
Helena, MT

Re:

TO MINIMIZE INCONVENIENCE ...**IN COMPLYING WITH THE SUBPOENA...****MAIL THE RESPONSIVE MATERIALS ...[AND]****EXECUTE THE ENCLOSED AFFIDAVIT ...**

Dear Sir:

This letter is in reference to the Grand Jury subpoena served upon you, which requires your appearance before a Federal Grand Jury in Billings, Montana, on April 16, 2025. The subpoena also requires that you bring certain documents with you. Please review the following information concerning the subpoena and follow the instructions outlined below.

1. **Personal appearance and testimony:** To minimize inconvenience to you in complying with the subpoena, you may mail the responsive materials in lieu of personally producing them before the Grand Jury. If you elect to mail the responsive materials, please follow the procedure outlined below:
 - a. Execute the enclosed affidavit before a notary public. This affidavit must accompany the documents and other materials being forwarded.
 - b. Each document should be identified by consecutive numbering in the lower right corner. The number of each document should be preceded by the company's initials. The documents should be placed in file folders or other enclosures – or organized electronically – and each enclosure should be clearly marked with the name of the producing entity and the date of this subpoena.
 - c. The package containing the subpoenaed material should be addressed or emailed to:

AO 110 (Rev. 05/09) Subpoena to Testify Before a Grand Jury

EXHIBIT

4

UNITED STATES DISTRICT COURT

for the

District of Montana

GJ-2023R00295-1

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Dr. Mark 406
27 Neil Ave #103
Helena, MT. 59601

YOU ARE COMMANDED to appear in this United States District Court below to testify before the court's grand jury. When you arrive, you will be allowed to leave.

Place: James F. Battin Courthouse, United States District Court
2601 2nd Ave. N.
Billings, MT. 59101

Distance from Helena -

To Billings - 239 miles

To Butte - 68 miles

To Great Falls - 91 miles

To Missoula - 113 miles

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

Any and all medical records, patient files, medical imaging, lab reports, and identification documents that refer to any patients of Dr. IBSEN who were prescribed or dispensed controlled substances.

Although not required, we would request that you not disclose the existence of this request. Any such disclosure could impede the investigation being conducted.

Date: 03/21/2025



CLERK OF COURT Tyler P. Gilman

T. P. Gilman
Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Michael A. Kakuk
Assistant U.S. Attorney
901 Front St., Ste. 1100
Helena, MT. 59626
michael.kakuk@usdoj.gov

406-437-5120

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

In re Subpoena, for “Dr. Mark 406,”

Case No.

**EMERGENCY MOTION TO QUASH
AN INVALID, UNREASONABLE, AND OPPRESSIVE
GRAND JURY SUBPOENA**

COMES NOW John P. Flannery, Esq., of the Virginia law firm of Campbell Flannery,¹ appearing *pro hac vice*, to move this Honorable Court, in reliance on Rule 17(c)(2) of the Federal Rules of Criminal Procedure, to quash a fatally defective grand jury subpoena, naming an LLC, “Dr. Mark 406;” we respectfully insist that the subpoena is invalid (failed service), unreasonable, oppressive, and perhaps selective in its designation of “Dr. Mark 406;”

COMES NOW FURTHER, the Medical LLC, by counsel, to specify what’s wrong with this subpoena (Exhibit 1):

- a. the subpoena (Exhibit 1) was sent by e-mail on April 1st to the Medical LLC, titled “Dr. Mark 406” (no “service,” however, was made on the Medical LLC’s registered agent)(Exhibit 2);

¹ Mr. Flannery’s appearance, *pro hac vice*, is pending, based on a motion by local counsel, Jack Hamilton Morris, of the Morris Law Firm, PLLC.

- b. There was no personal service on the entity's agent, nor on Dr. Mark Ibsen. See Rule 17(d) of the Federal Rules of Criminal Procedure (discussing service).
- c. The subpoena "noticed" on 4/1/2024 was returnable to the court house in Billings, Montana, 239 miles away from Helena; the government "forced" a choice, in a sense, suggesting a voluntary exchange for producing all manner of records, to avoid appearing in person after a long drive to Billings.
- d. The enormous breadth of the document demand was for "any and all records ... [for] any patients of Dr. Ibsen," (thereby demanding patient files and confidential information on an estimated 200,000 patients - going back to 1980)(about 45 years ago)(see Exhibit 5); more than that, the U.S. Attorney wanted all of a patient's medical records, "all medical records, patient files, medical imaging, lab reports and identification documents ..."
- e. As a general rule, it's worth noting that Title 18, United States Code, Section 3282, provides for a statute of limitation, that is five (5) years.²

² "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

- f. The LLC entity “noticed” on April 1, 2025 is a successor LLC entity for the medical practice and has only existed for the last four years (the LLC was registered as of 8/17/2020)(see Exhibit 2).
- g. The Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) generally prefers notice to any patient so each patient may consent (or not) to any request to receive the patient’s private and confidential medical records. For example, 45 CFR Section 164.512 (c), (e) and (f), suggests a judge is favored over a clerk of court, to review any subpoena to produce a patient’s medical information (PMI). (See Exhibit 6).
- h. By the breadth of the document demand, it’s hard to imagine that anyone could produce this large an array within the 15 days allotted after the defective e-mail notice issued to the Medical LLC.
- i. These several obvious errors suggests this is a “fishing expedition,” a dragnet among a sea of patients’ confidential information, in search of a legitimate “investigation.”³

BRIEF DISCUSSION

In support of this motion, we state further as follows:

³ One reference in the subpoena says, if we did disclose this document request, that “could impede this investigation.(underscoring supplied)”. See Exhibit 5.

1. The universe of medical files that is the focus of the government's subpoena goes back about 45 years (as indicated above). That speaks to the bizarre scope of this subpoena that is undiminished in its capacious reach.
2. We respectfully insist that the list of errors (a-i, *supra*) is sound and sufficient grounds to quash the disputed subpoena. Nor do we think there is a remedy that can cure these errors. We presume no grand jury considered this subpoena or its content. I assume but don't know whether the grand jury identified – GJ-2023R00295-1 – Exhibit 1, at p. 5 – is sitting and heard any matters in this "investigation." But a subpoena of such breadth for patient information requires a court order.
3. We have a few remarks that may be helpful to inform the court's discretion.
4. Assuming we are talking about a "covered entity," that is, a medical practice, though one has not been served in this case, we have a first question, blithely ignored by the government, that is, what may a covered entity disclose that is considered "protected health information?"
5. The simplest starting point is that a covered entity can disclose what has been expressly authorized by an order of the court. See 45 CFR Section 164.512 (e)(i)(Standard Disclosures for judicial and administrative proceedings).
6. We don't have that here.

7. The intrusive nature of the government's request by this subpoena suggests that there has not been much deliberation how to proceed fairly.
8. As for the overall "investigative" effort by the U.S. Attorney, we suggest this prosecutorial effort is gossamer thin and sounds in "selective prosecution;" perhaps a referral by the staff of the Montana Board of Medical Examiners after the Board rebuffed the charges staff proposed. Compare *United States v. Armstrong*, 517 U.S. 456, 463 (1996); see also *United States v. Bass*, 536 U.S. 862, 863 (2002)(*per curiam*).
9. Only days after the screening panel of the Montana Board of Medical Examiners found no charges against Dr. Ibsen, the U.S. Attorney filed this subpoena.

RELIEF REQUESTED

WHEREAS, based on the motion to quash herein, the arguments made, and the exhibits attached hereto, we respectfully request that this Honorable Court grant our motion to quash, and grant such other relief as this Court deems fit and just.

RESPECTFULLY SUBMITTED,

Jack Hamilton Morris, Esq. (MSB 3563)
Morris Law Firm, PLLC.
1818 Lockey Avenue
Helena, Mt 59601
Tel: 406-461-6240
e-mail: JackHMorris61@gmail.com
Local Counsel, movant for the
admission *pro hac vice* of

John P. Flannery, II, Esq.

A handwritten signature in blue ink, appearing to read "John P. Flannery, II, Esq.", is positioned above a horizontal line.

John P. Flannery, II, Esq. (VSB 22742)

CAMPBELL FLANNERY

1602 Village Market Blvd., Suite 225

Leesburg VA 20175

Tel: (703)771-8344

Cell: (202) 365-5060

e-mail: jonflan@aol.com

Lead Counsel, appear *pro hac vice*

CERTIFICATE OF SERVICE

I certify that the foregoing motion, with exhibits, has been forwarded on April 9, 2025 to Michael A. Kakuk, the AUSA who is responsible for the captioned federal grand jury subpoena; his office is located at 901 Front Street, Suite 1100, Helena, MT 59626 (e-mail – Michael.Kakuk@usdoj.gov); we have forwarded a copy of the motion and exhibits by overnight mail to his attention.

Jack Hamilton Morris, Esq. (MSB 3563)
Morris Law Firm, PLLC.
1818 Lockey Avenue
Helena, Mt 59601
Tel: 406-461-6240
e-mail: JackHMorris61@gmail.com

Local Counsel, moving the
Admission *pro hac vice* of
John P. Flannery, II, Esq.



MICHAEL A. KAKUK
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
Phone: (406) 457-5262
FAX: (406) 457-5130
Email: michael.kakuk@usdoj.gov

**ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

In re Subpoena for "Dr. Mark 406"	Case No. _____ JOINT NOTICE
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The United States, through Assistant U.S. Attorney Michael A. Kakuk, and Dr. Mark 406, LLC, through attorneys John P. Flannery and Jack H. Morris, jointly submit this notice to the court. The United States has agreed to suspend the return date on the subpoena at issue, and the parties are negotiating mutually agreeable subpoena language. The parties believe that they will be able to come to an agreement without the court's involvement and therefore notify the Court that an emergency hearing in this matter is not necessary at this time.

DATED this 15th day of April, 2025.

KURT G. ALME
United States Attorney

/s/ Michael A. Kakuk
Assistant U.S. Attorney
Attorney for Plaintiff United States

John P. Flannery, II, Esq.
Campbell Flannery
Attorney for Dr. Mark 406 LLC

Jack Hamilton Morris, Esq.
Morris Law Firm, PLLC
Local counsel for Dr. Mark 406 LLC

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT

for the

District of Montana

GJ-2023R00295-2

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Dr. Mark 406, LLC
c/o John P. Flannery, II
Campbell Flannery
jonflan@aol.com

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: Russell Smith Courthouse, United States District Court
201 E. Broadway St.
Missoula, MT. 59802

Date and Time:

June 25, 2025 - Documents Only

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

Any and all medical records, patient files, medical imaging, lab reports, and identification documents that refer to any patients of Dr. IBSEN who were prescribed or dispensed controlled substances from December 1, 2022 through the present.

Date: 03/21/2025



CLERK OF COURT Tyler P. Gilman

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Ryan Weldon
Assistant U.S. Attorney
101 East Front St., Ste 401
Missoula, MT 59807
ryan.weldon@usdoj.gov

406-829-3327

PROOF OF SERVICE

This subpoena for *(name of individual or organization)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



Dr Mark 406 - subpoena

From: Kakuk, Michael (USAMT) (michael.kakuk@usdoj.gov)
To: jonflan@aol.com
Cc: Ryan.Weldon@usdoj.gov; ngonty@campbellflannery.com
Date: Wednesday, April 23, 2025 at 06:29 PM EDT

John –following up on our discussion from the other day, attached is a draft subpoena and letter for medical records. I believe this addresses your concerns, but happy to discuss if you have any others. And since my last day with the office is Friday, please direct everything in this matter to Ryan moving forward. Thank you.

Michael A. Kakuk
Assistant United States Attorney
District of Montana
901 Front Street, Suite 1100
Helena, MT 59626
direct: (406) 457-5262
cell: (406) 850-9260
fax: (406) 457-5130

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 Subpoena form DrMark406.pdf
391.5 kB

 DrMark406 letter.docx
112.7 kB

May 31, 2026
Page 2

Ryan Weldon
Assistant U.S. Attorney
101 East Front St., Ste 401
PO Box 8329
Missoula, MT 59807
ryan.weldon@usdoj.gov

2. **Certification:** Please complete the enclosed certification provided for by Rule 902(11) of the Federal Rules of Evidence. By certifying the documents in response to this subpoena, we can avoid doing so at a later time and may be able to avoid requiring the records custodian from your business to personally appear at trial.
3. **Disclosure:** Under Fed. R. Crim. P. 6 and federal law, you are not bound by any secrecy obligations related to this subpoena. The government requests, however, that you do not disclose the existence of this request. Any such disclosure could impede the investigation being conducted and thereby interfere with the enforcement of the law.

Please advise us by May 28, 2025, whether you wish to personally appear or mail the documents as set forth above. Under no circumstance should the documents be delivered to the agent.

If you have any questions regarding the requested documents, please contact Special Agent Joe Osborne at (406) 370-3582.

Sincerely,

KURT G. ALME
United States Attorney

/s/ Ryan G. Weldon

RYAN G. WELDON
Assistant U.S. Attorney



U.S. Department of Justice
United States Attorney
District of Montana

Ryan G. Weldon
Assistant U.S. Attorney

101 East Front St., Suite 401
Missoula, Montana 59807

406-542-8851

May 31, 2026

sent via email

Dr. Mark 406, LLC
c/o John P. Flannery, II
Campbell Flannery
jonflan@aol.com

Re: Grand Jury Investigation

Dear Sir:

This letter is in reference to the Grand Jury subpoena served upon you, which requires your appearance before a Federal Grand Jury in Missoula, Montana, on June 25, 2025. The subpoena also requires that you bring certain documents with you. Please review the following information concerning the subpoena and follow the instructions outlined below.

1. **Personal appearance and testimony:** To minimize inconvenience to you in complying with the subpoena, you may mail the responsive materials in lieu of personally producing them before the Grand Jury. If you elect to mail the responsive materials, please follow the procedure outlined below:
 - a. Execute the enclosed affidavit before a notary public. This affidavit must accompany the documents and other materials being forwarded.
 - b. Each document should be identified by consecutive numbering in the lower right corner. The number of each document should be preceded by the company's initials. The documents should be placed in file folders or other enclosures – or organized electronically – and each enclosure should be clearly marked with the name of the producing entity and the date of this subpoena.
 - c. The package containing the subpoenaed material should be addressed or emailed to:

Dr. Mark 406, LLC

From: Weldon, Ryan (USAMT) (ryan.weldon@usdoj.gov)
To: jonflan@aol.com
Cc: Joseph.D.Osborne@dea.gov; Megan.Williams3@usdoj.gov
Date: Friday, June 6, 2025 at 11:42 AM EDT

John, I apologize for the delay. I was in trial this week. Below is the list of patient files we are requesting from Dr. Mark 406, LLC. Let me know if you have any concerns, and thank you for your time!

1. Feen, David
2. Foreman, Maria
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5. Patrick, Sandra
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10. Summers, Rodney
11. Virag, Kirsten
12. Wescott, Brian
13. Anderson, Lara
14. Fujimaki, Jessica
15. Dickus, Michael
16. Dickus, Rachel
17. Belling, Jerome
18. Erwin, Dawn
19. Talley, Michelle
20. Hill, Lana
21. Dillow, Lisa
22. Pasternak, Ellie



Ryan George Weldon
Deputy Criminal Chief – Economic Crimes Unit
U.S. Attorney's Office - District of Montana
101 E. Front., Suite 401 | Missoula, Montana 59802
((406) 829-3327 | 6 (406) 542-1476
✉ Ryan.Weldon@usdoj.gov

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RE: [EXTERNAL] Re: Dr. Mark 406, LLC



From: Weldon, Ryan (USAMT) (ryan.weldon@usdoj.gov)

To: jonflan@aol.com

Cc: Joseph.D.Osborne@dea.gov; Megan.Williams3@usdoj.gov; ngonty@campbellflannery.com

Date: Friday, June 6, 2025 at 01:31 PM EDT

Thank you, John, and have a great weekend!

Ryan George Weldon

U.S. Attorney's Office - District of Montana
101 E. Front, Suite 401 | Missoula, 59802
(406) 829-3327 | ✉ Ryan.Weldon@usdoj.gov

From: JOHN FLANNERY <jonflan@aol.com>

Sent: Friday, June 6, 2025 11:28 AM

To: Weldon, Ryan (USAMT) <Ryan.Weldon@usdoj.gov>

Cc: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>; Williams, Megan (USAMT) 17
<Megan.Williams3@usdoj.gov>; Nichole Gonty <ngonty@campbellflannery.com>

Subject: [EXTERNAL] Re: Dr. Mark 406, LLC

Dear Ryan,

I resisted calling because I wasn't sure when you were on trial. Thanks for getting back so promptly. I'll start reviewing the list.

John

Sent from my iPad

On Jun 6, 2025, at 11:42 AM, Weldon, Ryan (USAMT) <Ryan.Weldon@usdoj.gov> wrote:

John, I apologize for the delay. I was in trial this week. Below is the list of patient files we are requesting from Dr. Mark 406, LLC. Let me know if you have any concerns, and thank you for your time!

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13. Anderson, Lara
14. Fujimaki, Jessica
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16. Dickus, Rachel
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19. Talley, Michelle
20. Hill, Lana
21. Dillow, Lisa
22. Pastemak, Ellie

**Ryan George Weldon**

Deputy Criminal Chief – Economic Crimes Unit
U.S. Attorney's Office - District of Montana
101 E. Front., Suite 401 | Missoula, Montana 59802

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To: jonflan@aol.com

Cc: Joseph.D.Osborne@dea.gov; Megan.Williams3@usdoj.gov; ngonty@campbellflannery.com;
Heidi.S.Crater@dea.gov

Date: Wednesday, June 25, 2025 at 05:57 PM EDT

John, I just wanted to check in on any timeline you were thinking for the provision of the below files. Thank you again, and have a good day!

Ryan George Weldon

U.S. Attorney's Office - District of Montana
101 E. Front, Suite 401 | Missoula, 59802
(406) 829-3327 | ✉ Ryan.Weldon@usdoj.gov

From: Weldon, Ryan (USAMT)

Sent: Friday, June 6, 2025 11:31 AM

To: JOHN FLANNERY <jonflan@aol.com>

Cc: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>; Williams, Megan (USAMT) 17
<Megan.Williams3@usdoj.gov>; Nichole Gonty <ngonty@campbellflannery.com>

Subject: RE: [EXTERNAL] Re: Dr. Mark 406, LLC

Thank you, John, and have a great weekend!

Ryan George Weldon

U.S. Attorney's Office - District of Montana
101 E. Front, Suite 401 | Missoula, 59802

(406) 829-3327 | ✉ Ryan.Weldon@usdoj.gov

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Cc: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>; Williams, Megan (USAMT) 17
<Megan.Williams3@usdoj.gov>; Nichole Gonty <ngonty@campbellflannery.com>

Subject: [EXTERNAL] Re: Dr. Mark 406, LLC

Dear Ryan,

I resisted calling because I wasn't sure when you were on trial. Thanks for getting back so promptly. I'll start reviewing the list.

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Sent from my iPad

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Ryan George Weldon
Deputy Criminal Chief – Economic Crimes Unit
U.S. Attorney's Office - District of Montana
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 Ryan.Weldon@usdoj.gov

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9. Sparboe, Aaron
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22. Pasternak, Ellie

Ryan George Weldon

Deputy Criminal Chief – Economic Crimes Unit
U.S. Attorney's Office - District of Montana
101 E. Front., Suite 401 | Missoula, Montana 59802

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RE: [EXTERNAL] Re: Dr. Mark 406, LLC



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To: jonflan@aol.com

Cc: Joseph.D.Osborne@dea.gov; Megan.Williams3@usdoj.gov; ngonty@campbellflannery.com;
Heidi.S.Crater@dea.gov

Date: Wednesday, June 25, 2025 at 06:44 PM EDT

Sounds perfect, and thank you, John.

Ryan George Weldon

U.S. Attorney's Office - District of Montana
101 E. Front, Suite 401 | Missoula, 59802
(406) 829-3327 | ✉ Ryan.Weldon@usdoj.gov

From: Hon. John P. Flannery <jonflan@aol.com>

Sent: Wednesday, June 25, 2025 4:43 PM

To: Weldon, Ryan (USAMT) <Ryan.Weldon@usdoj.gov>

Cc: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>; Williams, Megan (USAMT) 17
<Megan.Williams3@usdoj.gov>; Nichole Gonty <ngonty@campbellflannery.com>; Crater, Heidi S.
<Heidi.S.Crater@dea.gov>

Subject: Re: [EXTERNAL] Re: Dr. Mark 406, LLC

ryan, i'll try to get back tomorrow or friday. be well. stay cool. John

On Wednesday, June 25, 2025 at 05:57:50 PM EDT, Weldon, Ryan (USAMT) <ryan.weldon@usdoj.gov> wrote:

John, I just wanted to check in on any timeline you were thinking for the provision of the below files.
Thank you again, and have a good day!

Ryan George Weldon

U.S. Attorney's Office - District of Montana
101 E. Front, Suite 401 | Missoula, 59802

(406) 829-3327 | ✉ Ryan.Weldon@usdoj.gov

From: Weldon, Ryan (USAMT)

Sent: Friday, June 6, 2025 11:31 AM

To: JOHN FLANNERY <jonflan@aol.com>

Cc: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>; Williams, Megan (USAMT) 17
<Megan.Williams3@usdoj.gov>; Nichole Gonty <ngonty@campbellflannery.com>

Subject: RE: [EXTERNAL] Re: Dr. Mark 406, LLC

Thank you, John, and have a great weekend!

Ryan George Weldon

U.S. Attorney's Office - District of Montana
101 E. Front, Suite 401 | Missoula, 59802

(406) 829-3327 | ✉ Ryan.Weldon@usdoj.gov

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Cc: Osborne, Joseph D. <Joseph.D.Osborne@dea.gov>; Williams, Megan (USAMT) 17 <Megan.Williams3@usdoj.gov>; Nichole Gonty <ngonty@campbellflannery.com>
Subject: [EXTERNAL] Re: Dr. Mark 406, LLC

Dear Ryan,

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Sent from my iPad

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4. Patrick, Robin
5. Patrick, Sandra
6. Gordon, Daniel
7. Gordon, Joseph
8. Gordon, Margaret



RE: Dr. Mark 406, LLC - Subpoena Production

From: Weldon, Ryan (USAMT) (ryan.weldon@usdoj.gov)

To: ngonty@campbellflannery.com

Cc: jonflan@aol.com; Megan.Williams3@usdoj.gov

Date: Thursday, September 11, 2025 at 06:26 PM EDT

Thank you, Nichole and John. I received these.

Ryan G. Weldon
U.S. Attorney's Office

From: Nichole Gonty <ngonty@campbellflannery.com>
Sent: Thursday, September 11, 2025 1:14 PM
To: Weldon, Ryan (USAMT) <Ryan.Weldon@usdoj.gov>
Cc: Hon. John P. Flannery <jonflan@aol.com>
Subject: [EXTERNAL] re: Dr. Mark 406, LLC - Subpoena Production

Dear Mr. Weldon,

In connection with the subpoena request to Dr. Mark 406, LLC, please find enclosed a cover letter dated today.

A digital copy of the requested production is available at the following link:

<https://app.box.com/s/442msmsefvaustf4gchut4e4q2hpcstd>

Please let me know if you encounter any difficulty accessing the files.

Sincerely,

Nichole Gonty, Paralegal

CAMPBELL FLANNERY, P.C.

One Village Plaza
1602 Village Market Boulevard, Suite 225
Leesburg, Virginia 20175
Telephone: (703) 771-8344
Facsimile: (703) 771-8345



Ryan George Weldon

Deputy Criminal Chief – Economic Crimes Unit
U.S. Attorney's Office - District of Montana
101 E. Front., Suite 401 | Missoula, Montana 59802
((406) 829-3327 | 6 (406) 542-1476

* Ryan.Weldon@usdoj.gov

Below is the list of patient files we are requesting from Dr. Mark 406, LLC.
Let me know if you have any concerns, and thank you for your time!

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19. Talley, Michelle
20. Hill, Lana
21. Dillow, Lisa
22. Pasternak, Ellie



ON THE PRODUCTION OF DOCUMENTS

AFFIDAVIT OF MARK S. IBSEN, MD

State of Montana, County of Lewis and Clark, to-wit:

MARK S. IBSEN, MD, does hereby swear or affirm and state under penalty of perjury, as follows:

1. My name is Mark S. Ibsen, M.D.
2. I have prepared this affidavit as it relates to the production of documents from my family medical practice.
3. In and around April 2025, my counsel, John P. Flannery, II, had contact with the U.S. Attorney's Office in Montana about this *subpoena duces tecum*, seeking certain patient files from our general practice.
4. There were some delays and a narrowing of the scope and breadth of the subpoena that, on its face, covered patients going back to 1980, and that encompassed all our practice's patients including the majority of our medical practice, relying on alternative treatments for pain, acute and chronic, including cannabis; indeed it is the majority of our practice, and we have had some success for our pain patients over the years. My

patients since November of 2022 who receive highly supervised opiate therapy is about 7% of my practice.

5. Ultimately, the US attorney of Montana agreed to send us a list of patients and this turned out to be 22 patients.
6. In summary, 19 of these patients suffer from adhesive arachnoiditis
7. 3 of the listed patients are deceased.
8. 19 of the patients were previously patients of Dr Aranda, who has retired.
9. Some of the patients formerly saw Dr. Tennant.
10. Some of the patients moved from Dr. Aranda to Dr. Bockoff.
11. In other words, from earlier treatment by other physicians, we had a record to understand what caused our patients' pain.
12. I have had patients, desperate because of their chronic pain, who I have helped by treatment and prescription in the context of a hostile regulatory environment in Montana and, more broadly, the nation.
13. In any case, we now have 22 patients to consider.
14. On or about the time of this affidavit, we are producing records responsive to the grand jury subpoena as revised.
15. I would like an opportunity to discuss in person before the grand jury each of these 22 patients.

16. I presume the US Attorney will first need to review the files we are producing by September 16, 2025.
17. It would be helpful to know in advance what questions you may have so I can address them, focus on those matters that serve your interest.
18. When you confer with my counsel, Mr. Flannery, when you are ready, we can discuss an appearance before the grand jury to discuss how these patients suffered and how we redressed the unremitting, mind numbing, chronic pain they suffered.
19. In my medical and personal way, over the years, I have tried to give attention to the salient points that define pain care in America a nightmare from which chronic pain patients cannot seem to awake.

MARK S. IBSEN, MD

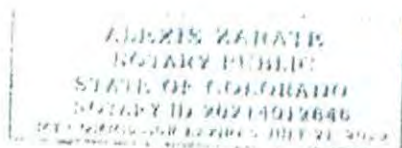


Sept 16, 2025

Sworn and subscribed before me, a Notary Public, in and for the State of Colorado,

County of Le Plata, on the 10th day of September, 2025.

 , Notary Public My Commission expires 01/11/2027



Patient Files - Dr. Mark 406 LLC



From: Weldon, Ryan (USAMT) (ryan.weldon@usdoj.gov)

To: jonflan@aol.com

Cc: Joseph.D.Osborne@dea.gov; Heidi.S.Crater@dea.gov

Date: Wednesday, September 3, 2025 at 04:29 PM EDT

John,

We reviewed the patient file for J.B. We just want to make sure that we have everything Dr. Ibsen has related to patient care for each identified patient, including all notes, records, anything received from other providers regarding the patient, etc.

I am more than willing to review after-the-fact affidavits, but we are mostly concerned with the actual patient files so that we can review them on our end.

Thank you, and have a great day!

Ryan G. Weldon

Deputy Criminal Chief – Economic Crimes Unit

U.S. Attorney's Office

District of Montana

P.O. Box 8329

Missoula, MT 59807

(406) 829-3327

17

MC-25-05-BLG-TJC Joint Notice

From: Stewart, Paulette (USAMT) (paulette.stewart@usdoj.gov)
To: heidi_gauthier@mtd.uscourts.gov; amanda_carrillo@mtd.uscourts.gov
Cc: jonflan@aol.com; tammy.farris@usdoj.gov; james.diller@usdoj.gov; ngonty@campbellflannery.com
Date: Tuesday, December 30, 2025 at 06:41 PM EST

Good afternoon.

Could you please file the attached Joint Notice? Because it is an MC case, I cannot file it electronically.
Thank you very much,

Paulette L. Stewart

Assistant U.S. Attorney
District of Montana
901 Front Street, Suite 1100
Helena, MT 59626
Direct line 406-457-5267
Govt cell 406-876-8208



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2025.12.30 draft Joint Notice v.1.docx
22.9 kB



PAULETTE L. STEWART
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
Phone: (406) 457-5120
FAX: (406) 457-5130
Email: paulette.stewart@usdoj.gov

**ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

In re Subpoena for "Dr. Mark 406"	Case No. MC 25-08-BLG-TJC
	JOINT NOTICE

The United States, through Assistant U.S. Attorney Paulette L. Stewart, and Dr. Mark 406, LLC, through attorney John P. Flannery II, jointly submit this notice to the court. The United States previously agreed to suspend the return date on the subpoena at issue, and the parties negotiated mutually agreeable subpoena language. Dr. Mark 406, LLC, has complied with the modified subpoena language and the subpoena can be closed by the court.

///

DATED this 30th day of December, 2025.

KURT G. ALME
United States Attorney

/s/ Paulette L. Stewart
Assistant U.S. Attorney
Attorney for Plaintiff United States

/s/ John P. Flannery II
John P. Flannery, II, Esq.
Campbell Flannery
Attorney for Dr. Mark 406 LLC

EXHIBIT

19

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

IN RE SUBPOENA, FOR "DR.
MARK 406"

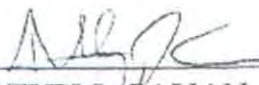
MC 25-08-BLG-TJC

ORDER

Previously, attorney John. P. Flannery II, on behalf of Dr. Mark 406, LLC filed an Emergency Motion to Quash a Grand Jury Subpoena. (Doc. 1.) On December 30, 2025, the parties filed a Joint Notice indicating they have negotiated mutually agreeable subpoena language, Dr. Mark 406, LLC has complied with the modified subpoena language, and the matter may be closed by the Court.

Accordingly, IT IS HEREBY ORDERED that the Emergency Motion to Quash (Doc. 1) is DENIED as moot. The Clerk is directed to close this case, and shall ensure nonelectronic service of this order is accomplished.

DATED this 5th day of January, 2026.


TIMOTHY J. CAVAN

United States Magistrate Judge

2/20/26, 12:46 PM

AOL Mail - RE: [EXTERNAL] I am informed that a chronic pain patients has been denied his meds. He is at risk. John

RE: [EXTERNAL] I am informed that a chronic pain patients has been denied his meds. He is at risk. John

From: Stewart, Paulette (USAMT) (paulette.stewart@usdoj.gov)

To: jonflan@aol.com

Cc: ngonty@campbellflannery.com; James.Diller@usdoj.gov

Date: Tuesday, February 10, 2026 at 04:07 PM EST



John –

James Diller is my legal assistant, not a member of DEA.

Your questions have now gone beyond care and concern of Mr. Penn and should be directed to San Mateo PD.

Have a good day.

Paulette L. Stewart
Assistant U.S. Attorney
District of Montana

From: Hon. John P. Flannery <jonflan@aol.com>

Sent: Tuesday, February 10, 2026 2:05 PM

To: Stewart, Paulette (USAMT) <Paulette.Stewart@usdoj.gov>

Cc: Nichole Gonty <ngonty@campbellflannery.com>; Diller, James (USAMT) <James.Diller@usdoj.gov>

Subject: Re: [EXTERNAL] I am informed that a chronic pain patients has been denied his meds. He is at risk. John

Dear Paulette,

Did any DEA Officers assigned to Montana travel to California?

Was James Diller in California at or about the time of the arrest and/or did he interview Patient Penn?

Did any officer DEA or San Mateo PD have a search warrant for Patient Penn's computer or cell phone.

Who has possession of Patient Penn's computer and cell phone?

Are the "drug related" charges his prescribed medicine; by what authority did they seize his medicine?

2/20/26, 12:46 PM

AOL Mail - RE: [EXTERNAL] I am informed that a chronic pain patients has been denied his meds. He is at risk. John

Was his insulin taken as well?

On what basis was his insulin taken from him and, on information and belief, not returned to him.

What provision was made for his health without his medicine.

Thank you.

John

On Tuesday, February 10, 2026 at 03:30:54 PM EST, Stewart, Paulette (USAMT) <paulette.stewart@usdoj.gov> wrote:

Hello, John.

I spoke with the DEA investigators in Montana, and San Mateo PD arrested Fenn for DUI and drug-related possession charges. The PD took custody of all the meds mentioned below. The seizure was not at the request or direction of DEA.

Thank you,

Paulette L. Stewart
Assistant U.S. Attorney
District of Montana

-----Original Message-----

From: JOHN FLANNERY <johnflan@goj.com>

Sent: Tuesday, February 10, 2026 9:36 AM

To: Stewart, Paulette (USAMT) <Paulette.Stewart@usdoj.gov>

Cc: Nichole Gonty <ngonty@campbellflannery.com>

Subject: [EXTERNAL] I am informed that a chronic pain patients has been denied his meds. He is at risk. John

"To a hammer, everything looks like a nail."

Paulette,

Patient David Fenn was visited by DEA. So I understand. I don't know if they are from CA or Montana.

If what I'm informed is true, he is not just being interviewed, his meds are being seized.

I'm informed that they - the DEA - or others - have seized his insulin.
And his pain medication
Now he's sick and in bed

2/20/26, 12:46 PM

AOL Mail - RE: [EXTERNAL] I am informed that a chronic pain patients has been denied his meds. He is at risk. John

He's a 62-year-old diabetic.

This patient is a high risk chronic pain patient who needs his insulin and his pain meds.

He can die.

He cannot be summarily denied these medications.

This is not a question of addiction. This is a necessary dependence so he may function as a human being.

More precisely, he will be in great pain and unable to function and may commit suicide or die.

He is one of the patients we indentified in response to the government's subpoena, and we provided information on his condition and history.

I do not represent the patient.

But I'd rather that we care for this ill man, than bring a wrongful death complaint later for our failure to confirm and protect this poor man now. It is not a crime to be ill.

I'm available to discuss this.

But I'd hope you'd chase this down and restore his needed treatment and medicine.

John

Sent from my iPad



JOHN P. FLANNERY, II, Esq.

Special Counsel

Direct – cell: 202-365-5060, e-mail - jonflan@aol.com

Firm – CampbellCastoClark.com

Land line: 703-771-8344,

Fax 703-777-1485

Campbell Casto Clark, PC

Attorneys at Law

One Village Plaza

1602 Village Mark Blvd, SE, Suite 225, Leesburg, VA

February 23, 2026

Paulette L. Stewart
Paulette.Stewart@USDOJ.gov
Assistant US Attorney
District of Montana
Tel: 406-457-5267

Re: Conduct of San Mateo PD and DEA S/As

Dear Paulette,

On February 10, 2026, you wrote and said there was an arrest of David Fenn, a chronic pain patient, and you referenced the fact that there was a “seizure.”

In truth and fact, the items seized were several - Mr. Fenn’s pain medication, his phone, computer and carryon bag.

Curiously, you only identified the seizure of his meds (by the San Mateo PD). You wrote that the local PD “took custody of all the meds.”

Mr. Fenn was denied his pain medication when taken into custody despite the fact these meds were prescribed, and were intended to redress Mr. Fenn’s chronic unremitting pain suffered when he is without medication. Prosecuting the ill who have not committed a crime is cruel and unusual when the person is a suffering patient.

You wrote, “the [limited] seizure [you referenced] was not at the request or direction of DEA.” Really? Two Montana DEA officers just happened to be in San Mateo when Mr. Fenn was arrested. Bloody unlikely! The Montana DEA officers were there by design. You might ask for their travel request and vouchers to confirm what was really going on here.

Unlike what you said in your note, the Montana DEA officers worked with San Mateo PD and they did confer with and coordinate efforts to question Mr. Fenn, though Mr. Fenn didn’t choose to talk.

The DUI stop by the San Mateo PD was a pretext, a sting operation, to make an opportunity to toss Mr. Fenn and seize what they might find.

But hears the rub.

The officers from California and Montana don’t understand the significance of a warrantless seizure of a person’s property in violation of the 4th amendment.

Their several searches were warrantless, there was no impartial magistrate to approve the search, no pc was demonstrated that might have justified a search, and the fact of the matter presents no 4th amendment “exception” that could permit a warrantless search – as Mr. Fenn was nowhere near the officers as they searched his car; he sat cuffed, in some pain, immobile in a PD cruiser, some distance away from his car; indeed they left him in the cruiser, and walked over to his car, and looked and opened whatever they wished, ultimately seizing his medication, phone, computer and carry on.

I respectfully insist and demand that you do what’s constitutionally right here, and return Mr. Fenn’s unlawfully seized property, his prescriptions, his phone, his computer and his carry-on bag.

I respectfully insist and demand that you not make matters worse, by having experts trying to break into his phone and his computer.

I respectfully insist and demand that all communications, digital and otherwise, between the San Mateo PD and the Montana DEA Officers, all memos, text messages, phone call nos. and dates and times, records of calls made, tape recordings, and that all of it be produced. What could that show? Why, the truth of the matter - that this was a bogus arrest - a set up.

I respectfully insist that the US Attorney, by your efforts, produce tape recordings made of the interviews had or attempted with Mr. Fenn and all DEA 6s made by the two Montana DEA Agents in relation to this incident.

Otherwise, we further insist and demand that your office and the DEA preserve and protect all relevant data connected with this incident and requested hereinabove.

This last request is meant to contain and protect the record against the government's spoliation of the evidence.

"Spoliation" refers to the intentional destruction or alteration of evidence relevant to ongoing or anticipated civil or criminal litigation.

Courts may impose sanctions for spoliation, including contempt, adverse inference instructions, dismissal of claims, monetary penalties, and remedies styled to the offense uncovered.

Notable cases that do a deep dive into the working and consequences of "losing" or "deleting" evidence are the litigated progeny that followed upon *Zubulake v. UBS Warburg* and *Residential Funding Corp. v. DeGeorge Financial Corp.*, which established the standards at the outset for spoliation and sanctions.

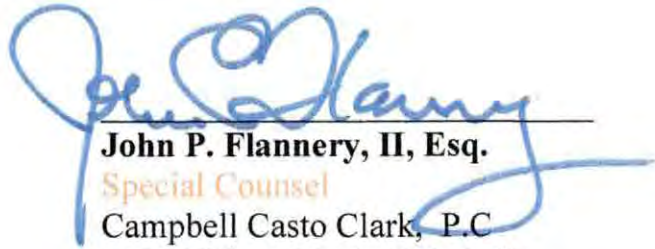
Simply put there is a duty to preserve evidence when litigation can be expected.

Parties have a duty to preserve evidence once litigation is reasonably anticipated, as here.

Give us a call if you want to discuss the matter further. Thank you for your

time and kind attention to this matter.

Sincerely,


John P. Flannery, II, Esq.
Special Counsel
Campbell Casto Clark, P.C.
1602 Village Market Blvd, SE
Suite 225
Leesburg, VA 20175
(202)-365-5060





[Go to Previous Versions of this Section](#)

**2025 California Code
Health and Safety Code - HSC
DIVISION 10 - UNIFORM
CONTROLLED SUBSTANCES
ACT
CHAPTER 6 - Offenses and
Penalties
ARTICLE 1 - Offenses Involving
Controlled Substances
Formerly Classified as
Narcotics
Section 11351.**

Universal Citation:

CA Health & Safety Code § 11351 (2025) 

Not for Sale

[< Previous](#)[Next >](#)

11351. Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

(Amended by Stats. 2011, Ch. 15, Sec. 152. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

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EXHIBIT

23

ACCOUNTING COPY

SAN MATEO COUNTY JAIL

REDWOOD CITY, CALIFORNIA

BAIL FINE RECEIPT

DATE 1/28/2024

ISSUING DEPT WARRANT

on view

ARRESTING AGENCY

San Mateo PD

RECEIVED
FROM

Le Bail Bonds

ADDRESS 1049 East Santa Clara St. San Jose, CA 95116

FOR Fenn, David

AKA ID# 17591387 J#0870177

WARRANT
NUMBER(S)COMMITMENT
NUMBER

BAIL	CASH	10%	CHECK #	SURETY BOND #	AMOUNT
				555352355-9	\$ 40000.00

CHARGE(S) RELEASED ON

HS11351, HS11352(A), HS11352(B), VC23152(F)

COURT FOR APPEARANCE

San Mateo Co Superior Ct

APPEARANCE DATE

2/26/24

COURT ADDRESS

400 county center

TIME

9:00

AM
PM

Redwood City, CA 94063

FINE:

COURT

COURT NO.

SENTENCE

DAYS AND/OR FINE

PER DAY

W/ASSESSMENT OF

CREDITS

TIME SERVED

Q/T AND W/ CREDITS

DAYS TO PAY

CASH RECEIVED

UNSERVED SENTENCE

PLUS ASSESSMENT

AMOUNT

RECEIPT NO.

S.N. 96241

BY

DEPUTY

Rev. 12/12 200000-1



Bill Brew · 3rd

Detective, DEA Task Force Officer at Laurel Police Dept.

[View profile](#) · [Add to your network](#) · [Contact info](#)

[Add to your network](#)

On Tuesday, February 10, 2026 at 03:30:54 PM EST, Stewart, Paulette (USAMT) <paulette.stewart@usdoj.gov> wrote:

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Assistant U.S. Attorney
District of Montana



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Paulette L. Stewart
Assistant U.S. Attorney
District of Montana

DEA FILE DUPLICATES

ALL FILES PRODUCED

JEROME BELLING

MARGARET GORDON

DANIEL GORDON

JOSEPH GORDON

ELIE PASTERNAK

1. Feen, David
2. Foreman, Maria
3. Gawin, Frank
4. Patrick, Robin
5. Patrick, Sandra
6. Gordon, Daniel
7. Gordon, Joseph
8. Gordon, Margaret
9. Sparboe, Aaron
10. Summers, Rodney
11. Virag, Kirsten
12. Wescott, Brian
13. Anderson, Lara
14. Fujimaki, Jessica
15. Dickus, Michael
16. Dickus, Rachel
17. Belling, Jerome
18. Erwin, Dawn
19. Talley, Michelle
20. Hill, Lana
21. Dillow, Lisa
22. Pasternak, Ellie

EXHIBIT

26

6, 7, 8, 17, 22

DEA Administrative Subpoena RM-26-218693



From: Crater, Heidi S. (heidi.s.crater@dea.gov)

To: jonflan@aol.com

Cc: markmusheribsen@gmail.com

Date: Friday, May 8, 2026 at 08:31 PM EDT

Good evening,

Attached please find a subpoena for patient records.

Regards,
Heidi

Heidi S. Crater

Diversion Investigator

Billings Resident Office

Drug Enforcement Administration

U.S. Department of Justice

Office: 571-362-3313

Heidi.s.crater@dea.gov



Administrative Subpoena_RM-26-218693_2026-05-08_Dr. Mark Ibsen.pdf

75.8 kB

**U.S. DEPARTMENT OF JUSTICE/DRUG ENFORCEMENT ADMINISTRATION
SUBPOENA**

In the matter of the investigation of
Case No: RM-23-2014
Subpoena No. RM-26-218693

TO: Dr. Mark Ibsen
ATTN: John P. Flannery, II, Esq.
AT: 27 Neill Avenue, Suite 103
Helena, MT 59602

Phone: (406) 594-7166
Email: MARKMUSHERIBSEN@GMAIL.COM

By the service of this subpoena on you by Diversion Investigator Heidi S Crater who is authorized to serve it, you are hereby commanded and required to appear before Heidi S Crater, an officer of the Drug Enforcement Administration, to give testimony and bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

Pursuant to an investigation of violations of 21 U.S.C. Section 801 et seq., please provide the following for the dates between 05/07/2021 - 05/07/2026 Mountain Time

- Please provide complete copies of any and all medical files and/or any other documents reflecting or documenting office visits, patient consultations, drug screens, medical imaging, identification documents, and prescriptions for the following patients: Jerome Belling, Date of birth: 06/27/1960; Margaret Gordon, Date of birth: 03/13/1964; Daniel Gordon, Date of birth: 02/15/1988; Joseph Gordon, Date of birth: 12/26/1981; Ellie Pasternak, Date of birth: 03/07/1995. These documents may include, but are not limited to medical files, patient profiles, notes of patient contact, any electronic or paper documentation related to the patient, prescriptions, and notes regarding contact with pharmacies. This is an administrative subpoena issued by the Drug Enforcement Administration (DEA), a federal law enforcement agency, for records that may include protected health information. DEA is authorized by 21 U.S.C. § 876 to issue an administrative subpoena and is permitted by 45 C.F.R. § 164.512(f) to request protected health information. The information sought is relevant and material to a legitimate law enforcement inquiry; the subpoena is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and de-identified information cannot reasonably be used. **NONDISCLOSURE:** Disclosure of any information concerning this subpoena would be reasonably likely to impede a federal law enforcement investigation. Pursuant to 45 C.F.R. § 164.528(a)(2), you must suspend notice to any individual whose protected health information is disclosed in response to this subpoena.

Please do not disclose the existence of this request or investigation for an indefinite time period. Any such disclosure could impede the criminal investigation being conducted and interfere with the enforcement of the Controlled Substances Act.

Please direct questions concerning this subpoena and/or responses to Diversion Investigator Heidi S Crater, 571-362-3313.

Please complete and execute a Certification of Records and return the fully executed Certification of Records with your response.

Place and time for appearance: At 2970 King Avenue West Billings, MT 59102 US on the 7th day of June 2026 at 05:00 PM. In lieu of personal appearance, please email records to heidi.s.crater@dea.gov.

Failure to comply with this subpoena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpoena, and to punish default or disobedience.

Issued under authority of Sec. 506 of the Comprehensive Drug
Abuse Prevention and Control Act of 1970, Public Law No. 91-513
(21 U.S.C. 876)

ORIGINAL

Signature: 

Cesar E Avila, Assistant Special Agent in Charge

Issued this 8th day of May 2026

FORM DEA-79

* - Please provide complete copies of any and all medical files and/or any other documents reflecting or documenting office visits, patient consultations, drug screens, medical imaging, identification documents, and prescriptions for the following patients: Jerome Belling, Date of birth: 06/27/1960; Margaret Gordon, Date of birth: 03/13/1964; Daniel Gordon, Date of birth: 02/15/1988; Joseph Gordon, Date of birth: 12/26/1981; Ellie Pasternak, Date of birth: 03/07/1995. These documents may include, but are not limited to medical files, patient profiles, notes of patient contact, any electronic or paper documentation related to the patient, prescriptions, and notes regarding contact with pharmacies. This is an administrative subpoena issued by the Drug Enforcement Administration (DEA), a federal law enforcement agency, for records that may include protected health information. DEA is authorized by 21 U.S.C. § 876 to issue an administrative subpoena and is permitted by 45 C.F.R. § 164.512(f) to request protected health information. The information sought is relevant and material to a legitimate law enforcement inquiry; the subpoena is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and de-identified information cannot reasonably be used. NONDISCLOSURE: Disclosure of any information concerning this subpoena would be reasonably likely to impede a federal law enforcement investigation. Pursuant to 45 C.F.R. § 164.528(a)(2), you must suspend notice to any individual whose protected health information is disclosed in response to this subpoena.