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COVER STORY

Search warrants stay secret in major investigation

A U.S. magistrate judge declined to unseal a search warrant affidavit in an investigation targeting a drug rehabilitation company

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SANTA ANA — In a rare dispute that attorneys said has wide implications, a federal magistrate judge on Tuesday declined to unseal a search warrant affidavit in a high-profile investigation targeting a multi-state drug rehabilitation company based in Orange County.

No criminal charges have been filed in connection to the June 13 raids at six locations connected to Sovereign Health and the home of its CEO, Tonmoy Sharma. Sharma's lawyer, Joshua M. Robbins, a partner with Greenberg Gross LLP, wanted the affidavit unsealed as the firm pursues potential legal challenges.

It's an argument about secrecy that's shrouded in secrecy: The U.S. attorney's office's reply to the motion to unseal is sealed, and Assistant U.S. Attorney Joseph T. McNally referenced a sealed declaration Tuesday that he said supports his argument that "a compelling government interest" justifies the continued sealing.

"This is, I think, an issue of great consequence for the government, not just in this courtroom but in U.S. attorney's offices throughout the Circuit," McNally said, calling the investigation a large-scale, complex matter.

"The last thing that's in the public interest is to basically pressure the government to complete investigations or rush to judgment," he said.

While U.S. Magistrate Judge Douglas F. McCormick tentatively agreed to keep the affidavit sealed, he said the situation could



Joshua M. Robbins, a partner with Greenberg Gross LLP.

change, so he'll want to review the issue in a few months to see if the compelling interests that warrant the sealing still exist.

"I have to leave open the possibility that the compelling interest will lesson or dissipate over time," McCormick said.

McCormick took the matter under submission so he can finalize a mechanism to review the investigation "that's not intrusive" to McNally and recognizes that "I'm not his boss, I'm not his manager, and I don't want to be in the position of reviewing or looking over his shoulder as the investigation goes on."

Robbins, who was joined in court by Green-

berg Gross associate James P. Miller, argued in his motion to unseal that the Fourth Amendment entitles them to a copy to determine if the resulting searches were lawful.

The affidavit "likely contains false and misleading information and omits other material information," according to the motion. Robbins alleged the investigation is driven in part by the insurance company Health Net, Inc., "in order to gain advantage in its pre-existing and ongoing litigation with Sovereign and other health care providers." *Dual Diagnosis Treatment Center v. Health Net, Inc., et al.*, LC104357 (L.A. Super. Ct., filed June 30, 2016).

"When the government invades your home or business and takes away things, you have a right generally to know why, and you have the right to challenge it," Robbins told McCormick.

Robbins said the attorneys already have a "pretty clear picture" of the investigation and don't need the affidavit "so we can peek inside the investigation and get some advantage," but McNally said that's exactly what they're doing.

McCormick noted that the issue of whether to unseal a search warrant affidavit has rarely been seen in his 17 years working in the Ronald Reagan Federal Building and Courthouse. He spent 13 of those years in the U.S. attorney's office.

Robbins said earlier that it's rare "because raids of businesses in white-collar cases are relatively rare" and when they do take place, they're rarely challenged.

"It's habit, your honor. [Federal prosecutors] simply aren't used to having this issue raised or challenged," Robbins said.