

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HARRISON FRANKLIN,

Plaintiff,

ORDER

v.

02-C-618-C

GARY MCCAUGHTRY, et al.,

Defendants.

Before the court is plaintiff Harrison Franklin's July 1, 2003 motion to compel defendants to provide more complete responses to his discovery requests (Dkt.47). Plaintiff asserts that some of defendants' answers to his discovery requests indicate that defendants are in possession of "secret" files pertaining to his medical condition; plaintiff asks for an order granting him access to these files. Further, plaintiff states that he will not sign any medical release allowing defendants to have access to his medical files absent a guarantee that he will have access to the same files.

Defendants responded with a letter dated July 7, 2003 (Dkt. 48) in which they assert that they do not understand the basis for plaintiff's belief that "secret" medical files exist. Defendants state that plaintiff may review his medical files in their entirety at the institution upon making a proper request. Defendants also explain that, pursuant to this court's June 19, 2003 order, they have postponed responding to plaintiff's discovery requests concerning

medical questions until they receive a release form from plaintiff granting them access to his medical files.

Defendants report that they are attempting to resolve plaintiff's issues concerning the medical release informally, as shown by their July 3, 2003 letter to plaintiff to which they attached a proposed amended release form. This letter and proposed release form attempt to address plaintiff's concerns about the scope of the medical release and explain that the release "will not give [defendants] access to anything you are not also entitled to see."

Hopefully, defendants' July 3, 2003 correspondence has resolved plaintiff's concern about his medical files. But even if it hasn't, this court cannot grant plaintiff's request for access to "secret" medical files because no such files exist. There is one set of medical files pertaining to plaintiff in this case and they are in the custody of the Wisconsin Secure Program Facility. Plaintiff can access these files in their entirety by making a proper request at the institution. This is true whether or not plaintiff signs any medical release form. However, because plaintiff's medical records are confidential, defendants cannot see them unless plaintiff signs a release form. The medical release form would allow defendants to inspect and copy only those records that plaintiff specifies, and the release form would not authorize defendants to see anything in the files that plaintiff cannot see himself.

As noted in this court's order of June 19, 2003, plaintiff has no legal obligation to provide any release if he does not want his medical records disclosed, and this court will not force him to sign one. However, failing to provide a medical release to defendants could

jeopardize plaintiff's case if defendants can establish that they are unable to defend against plaintiff's claims unless they have access to plaintiff's medical records.

As a separate part of his motion, plaintiff seeks more complete answers to Interrogatories 4 - 7. Defendants have not responded to this part of plaintiff's motion and neither side has provided the court with a copy of defendants' answers to the interrogatories. Without this information I cannot rule on this part of the motion, so I will stay consideration of this part of plaintiff's motion until defendants file a response. Defendants are directed to submit a copy of their answers to plaintiff's interrogatories and along with their response to this part of the motion not later than August 4, 2003.

ORDER

IT IS ORDERED that:

1. Plaintiff's motion for access to secret medical files in defendants' possession concerning plaintiff is DENIED as moot; and
2. Plaintiff's motion for more complete answers to Interrogatories 4-7 is STAYED pending submission of defendants' response.

Entered this 28th day of July, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge