

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

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JOHN L. DYE, JR.,

Plaintiff,

v.

DR. CHARLES J. GRISDALE, *et al.*,

Defendants.

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ORDER

11-cv-443-slc

Plaintiff John Dye is proceeding on claims that defendants Charles Grisdale, Jeffery Garbelman, Ralph Froelich, Michael Thurmer and Belinda Schrubbe violated his Eighth Amendment rights by failing adequately to accommodate his "eating disorder/phobia." In a December 6, 2011 order, I stayed briefing on plaintiff's motion for preliminary injunctive relief pending plaintiff's authorization of the release of relevant medical records as follows: all of plaintiff's medical records while he has been incarcerated at the Waupun Correctional Institution and all of his past mental health records and any past records that address any claim, symptom or diagnosis of an eating disorder.

Defendants have responded, stating that they have been unable to come to an agreement with plaintiff regarding the authorization form, and asking for the case to be dismissed, or alternatively, for denial of plaintiff's PI motion because of his obstinance. Defendants state further that even if the parties were to come to an agreement on the authorization form, plaintiff's medical records from his 17 years as an inmate stretch over 200 pages, and it is difficult for DOC employees to discern what records should be redacted given the complex nature of eating disorders. Accordingly, they have suggested a new plan: have the DOC submit all of plaintiff's medical records to counsel, and have counsel enter into a protective order limiting redisclosure. Counsel states:

[O]ur office is more suited to a first-cut review of the records than the DOC medical records office, and we can accomplish it more efficiently. Once we've taken our first cut at Dye's medical records, we can determine what time periods are most relevant and flag particular entries for DOC reviewers.

Dkt. 24 at 5-6.

Plaintiff has filed numerous submissions expressing his own frustration with the authorization process. Plaintiff has fashioned his own authorization forms attempting (but failing) to match the court's instructions. The problem seems to be that plaintiff does not want to check the "Mental Health" box on the authorization form.

Given that plaintiff has seemingly, in his own way, attempted to comply with this court's December 6, 2011 order and because he clearly wishes to litigate this case, I will deny defendants' motion to dismiss the case or deny the preliminary injunction motion. However, I will reiterate that plaintiff cannot continue with the case unless he is willing to authorize the release of his medical records. Given defendants' explanation of the difficulty in parsing plaintiff's medical records, the court is resolving the problem this way:

Not later than April 12, 2012, defendants will submit to plaintiff an authorization form releasing *all* of plaintiff's medical records, including mental health records, along with a proposed protective order limiting the re-disclosure of those records to uses in conjunction with this litigation.

Plaintiff will have until April 19, 2012 to sign the authorization form and the proposed protective order. If plaintiff chooses not to sign these documents, then the court will dismiss this lawsuit because it will be impossible for defendants adequately and properly to investigate plaintiff's allegations and defendant against them.

Plaintiff should realize that if he agrees with the entry of defendants' proposed protective order, then the defendants will *not* be able to disclose his health care information to anyone

unless this disclosure is directly related to this lawsuit, and whoever the information is disclosed to will have to keep it private and confidential. If plaintiff remains uncomfortable about sharing this information, then he can ask the court to dismiss the case.

## ORDER

It is ORDERED that

1. Defendants' motion to dismiss the case or deny the preliminary injunction motion, dkt. 24 and 30, both are DENIED.
2. The parties shall proceed with resolving the medical authorization issue as outlined above.

Entered this 5<sup>th</sup> day of April, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge