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.

Plaintiff Harrison Franklin filed another motion to compel discovery and for sanctions, unhappy with some of defendants' responses to his second set of interrogatories and requests for admissions (dkt. 62). Plaintiff also complains that the state is intentionally interfering with his ability to prepare for trial. Both sets of defendants responded in opposition. (*See* dkts. 85 & 87). For the reasons stated below, I am denying plaintiff's motion in all respects.

Discovery Disputes

Plaintiff complains that defendants's answers to his second set of requests for admissions (RFAs) Nos. 3 and 4 are inadequate and misleading. In RFA 3, plaintiff asked that defendant Bartels admit that "plaintiff received absolutely no treatment fo the diabetes or blood sugar while housed at SMCI during the years of 2000 and 2001."

The state defendants responded to this, but have since withdrawn their response because the RFA was not directed toward them.

According to defendant Bartels RFA 3 incorrectly assumes that plaintiff had a high blood sugar level during the time he was at SMCI and that some treatment was necessary; according to Bartels, plaintiff's first elevated blood sugar level was apparently taken in October 2001 while plaintiff was at Waupun or at the UW Hospitals. Absent some showing by plaintiff that this is incorrect, namely that medical tests or other information indicated a need for treatment during 2000 and that part of 2001 he was at the WSPF, Bartel's answer is adequate and it need not be supplemented.

In RFA 4 plaintiff asked the defendants to admit that Bartels told Tripp that plaintiff needed his eyeglasses. Both sets of defendants denied this RFA. Bartels affirmatively stated that she is unaware of any such conversation at this time and therefore was denying the request. Linda Hoddy-Tripp submitted an affidavit in support of her motion for summary judgment in which she outlined her version of what occurred with plaintiff's eyeglasses, including copies of all her e-mail with Bartells. *See* dkt. 74 at 4-6. This evidence establishes that the situation was more fluid than plaintiff is trying to make it; therefore, it was not incorrect for either set of defendants to deny RFA 4.

Claims of Interference

Plaintiff raises several complaints of interference by the institution with his prosecution of this lawsuit. First, he complains that the institution is not allowing him to send sealed letters to physicians at the U.W. Hospital in an attempt to interfere with his efforts to name experts, then held up his letters to cause late disclosure. Defendants respond

that they are not the ones doing this, but that in any event, letters to witnesses do not qualify as "legal mail" under the state regulations governing prisoner mail. Next they observe that they clarified this issue with plaintiff last April, plaintiff's expert disclosure deadline was August, and he waited to file this complaint until October. Defendants are correct: plaintiff is not entitled any relief. He is not entitled to send sealed letters to the university's physicians and in any event, he brought this matter to the court's attention much too late.

Second, plaintiff complains that certain institutional staff (Scullion and Kool) are punishing him for refusing to discuss his medical situation with them. According to plaintiff, Scullion and Kool, who are not health service employees, quiz him about the medical conditions relevant to this lawsuit and because he will not answer they torment him with demotions, cell searches, seizure of legal documents, night-time cell-door kicking, keeping his light on at night, pilfering his food and writing up false tickets. Plaintiff attached to his motion a September 9, 2003 memo from Kool in which he denies and refutes each of plaintiff's allegations; defendants further respond that none of this has anything to do with the current lawsuit and that the issues in this case, with few exceptions, related to defendant's old institution. It is not necessary for me to pick sides on the dispute between plaintiff and Kool because even if everything had occurred as plaintiff alleges, retaliation for filing a lawsuit is a new and different allegation that plaintiff would have to allege in a separate lawsuit. Certainly plaintiff is entitled not to be harassed as a result of filing this lawsuit; the institution obviously is aware of this; and the court expects the institution and

its employees to act accordingly. At this time no judicial relief is necessary or appropriate on plaintiff's retaliation allegations.

Third, plaintiff complains that defendants have not arranged his requested deposition of a correctional officer. As defendants note, it is up to plaintiff to arrange, schedule and pay for any depositions, as set forth in F.R. Civ. Pro. 30-32. It is not up to the court to order defendants to make a witness available except as provided by the rules.

Fourth, plaintiff complains that defendants "refuse to give me access to my medical records from UW-hospital." *See* dkt. 62 at 4. Defendants respond that all UW medical records are in with the rest of his medical file, to which plaintiff has access. This is all that is required of defendants.

In sum, plaintiff is not entitled to any relief and his multi-faceted motion to compel is DENIED in all respects.

Entered this 8th day of December, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge