

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

LEON IRBY,

Plaintiff,

v.

JON E. LITSCHER, *et al.*,

Defendants.

ORDER

03-C-346-C

On January 19, 2004, defendant Pamela Bartels (“defendant”) filed a motion to compel plaintiff to sign a medical release, or in the alternative, to dismiss the claims against her. *See* dkt. 20. It is now February 4, 2004, and plaintiff has not responded in any fashion to the motion. I am granting the motion to compel in principle, as explained below.

Last August, plaintiff, a prisoner at the Wisconsin Secure Program Facility, filed an 88 page, 423 paragraph civil complaint against a broad range defendants. This court denied leave to proceed on many of plaintiff’s claims, but among those it allowed was plaintiff’s Eighth Amendment claim against defendant based on his allegation that she ignored his complaints of severe pain. *See* Sept. 2, 2003 Order, dkt. 9, at 9-10, 39 and 34-35. Defendant then served a medical release form on plaintiff; plaintiff declined to sign it because he viewed it as overbroad. Defendant’s attorney replied that that plaintiff’s complaint raised a broad range of medical issues and several complaints of unknown origin;

in order to respond to them, defendant needed access to plaintiff's entire file. *See* Knott Affidavit, dkt. 21, Exhs. A-C.

It is not at all clear that the portions of plaintiff's medical file he wishes to protect actually are so irrelevant to this lawsuit that defendant is not entitled to see them at all. The medical issue on which this court is allowing plaintiff to proceed seems narrow, but indifference to complaints of severe pain potentially could involve virtually any aspect of plaintiff's medical and psychological history. Therefore, the requested release is proper. On the other hand, medical and psychological records are highly personal and therefore are entitled to protection from *unnecessary* disclosure.

Therefore, defendant is entitled to a broad medical/psychological records release of the sort provided to plaintiff in this case. In the event plaintiff signs the release, then this court will limit the disclosure of these sensitive records in order to protect plaintiff's legitimate privacy interests. At this stage, disclosure shall be limited solely to defendant, her attorney and any medical or psychiatric experts with whom they must consult. This group would include any medical or psychiatric caregivers at the institution who already have access to plaintiff's confidential records. After this preliminary review, defendant may request leave to expand disclosure for good cause. The court will balance any such request against plaintiff's privacy interests.

This court cannot force plaintiff to sign a medical release. If plaintiff is unwilling to provide a broad release, even under this court's protective order, then he remains free to decline to provide consent. Such a decision, however, likely would result in dismissal of his claim against this defendant.

Therefore, plaintiff shall have until February 18, 2004 within which to sign and return to defendant's attorney an unqualified release form. Defendant and her attorney shall not disclose these records or their contents to any other person except for medical or psychiatric experts working on this case. Further disclosure shall occur only by leave of court for good cause shown.

If plaintiff has not authorized release of his records by February 18, 2004 then defendant may renew her motion to dismiss plaintiff's claim against her.

Entered this 4th day of February, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge