

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

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EDWIN C. WEST,

Plaintiff,

v.

STEVE HAMILTON, AMY WYTTENBACH,  
DENNIS SNYDER and DARLENE  
HEIMERMANN-RAMSEY,

Defendants.  
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ORDER

04-C-211-C

Plaintiff Edwin West is a patient at the Sand Ridge Secure Treatment Center. In his complaint in this case, he alleges that the defendants terminated him from a Corrective Thinking Program because of a conflict between him and one of his therapists, and that other patients in the program were disciplined less harshly for similar behavior. Defendants have answered the complaint and dispositive motions are due to be filed by January 7, 2005.

On September 7, 2004, the magistrate judge granted defendants' motion for a protective order and denied plaintiff's motion to compel the defendants to allow him to review the confidential treatment records of other patients in his group, despite the fact that those patients agreed, in writing, that plaintiff could see their records. Now before the court in plaintiff's request for permission to dismiss his case voluntarily, in which plaintiff states

that in light of the magistrate judge's order, he believes he will be unable to prove his claim that defendants are treating him differently from similarly situated patients in violation of his Fourteenth Amendment rights.

Although plaintiff has not asked this court to review the September 7 decision of the magistrate judgment, I note that even if he had, I would concur with the magistrate judge's decision that releasing or disclosing the treatment records of other patients to plaintiff poses a significant threat to the institution's goal of treating sex offenders. The magistrate judge's opinion is thorough and well-reasoned. Although he concluded that the strong public interest in preserving the confidentiality of mental health records outweighed plaintiff's interest in reviewing them, he did direct defendants to review the records of the patients from which plaintiff had obtained signed authorizations and to turn over to plaintiff a stipulation revealing 1) the number of Corrective Thinking Cards that were provided to each patient; 2) the type of behavior for which each card was written; and 3) whether any of these patients' Developed Learning Plans were identical to plaintiff's. This information should have been sufficient to satisfy plaintiff's efforts to discern whether proof exists in other patient records that defendants treated plaintiff differently from other similarly situated patients when they dismissed him from the program for his behavior rather than issuing him a Corrective Thinking Card.

When a motion for voluntary dismissal is filed after the defendant have filed an answer such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the

plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendant has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendants.

If plaintiff is opposed to a dismissal of his case with prejudice, he should request that his motion for voluntary dismissal be withdrawn no later than September 30, 2004.

ORDER

IT IS ORDERED that plaintiff may have until September 30, 2004, in which to withdraw his motion for voluntary dismissal. If, by September 30, 2004, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment in favor of the defendants, dismissing this case with prejudice.

Entered this 20th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge