

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

CLAYTON HARDY MELLENDER,

Plaintiff,

v.

DANE COUNTY and DR. YOUNG KIM,

Defendants.

ORDER

06-C-298-C

In this lawsuit plaintiff claims that the Dane County Jail and one of its doctors violated his rights by improperly withholding his prescribed methadone. Before the court is defendants' motion to compel plaintiff to sign a medical release form directed to the Wisconsin Department of Corrections. (Dkt. 72). Plaintiff opposes the motion, contending that only his methadone prescription from the U.W. Pain Clinic is relevant to this lawsuit and that it is unnecessarily invasive for defendants to be reviewing his DOC records. (Dkt. 75).

Defendants do not dispute that Dr. Rudin at the UW prescribed methadone to plaintiff, but assert the plaintiff also has claimed that Dr. Heinzl at DOC also had prescribed methadone for him during the period covered by plaintiff's stay at the Dane County Jail.¹ Defendants submit that they are entitled to obtain plaintiff's DOC records

to confirm the basis for [plaintiff's] prescription, the amount and frequency of the prescribed dosage, the level and persistency of the pain that Mellender claims, and the effectiveness of other medications, if attempted, at New Lisbon Correctional institution.

Dkt. 72 at 2.

¹ See plaintiff's Nov. 25, 2006 letter to defendants' attorney, dkt. 73, Exh. C.

Plaintiff disagrees, but he has a counterproposal: since he anticipated being released from custody on January 30, 2007, he is willing to meet with the court for an *in camera* review of his DOC medical records. *See* dkt. 75 at 3.²

There is no need for such a review because in this dispute, defendant is correct and plaintiff is incorrect. Plaintiff filed this lawsuit and put his methadone needs and prescriptions into play. If he had a methadone prescription from Dr. Heinzl during the relevant time period, then defendants are entitled to learn the details. It is not plaintiff's prerogative to deem his DOC records irrelevant. Such information potentially is relevant not just to determine liability but also damages, if this case makes it to that phase.

Plaintiff is correct that his medical records are highly personal and sensitive, but we routinely accommodate parties' privacy rights with protective orders, not by forbidding disclosure. In this case, if plaintiff is willing to sign the release, then the DOC records will be disclosed under what we call attorney's eyes only (AEO) protection, at least initially. The only people who may review these records are defendants' attorney, employees working for the law firm who have a genuine business need to see the records, and defendants' expert witness(es), who first must sign a confidentiality agreement. Defendants must obtain court permission to disseminate this information further.

All this being so, this court never will order a party to sign a medical records release form. But once the court has determined that information contained in those records is directly relevant to material issues in the lawsuit, then a party's decision not to sign a release will have consequences commensurate with the importance of the records. In this case, DOC records

² Congratulations to plaintiff on his release from custody, who already has provided the court with his new mailing address.

regarding plaintiff's need for and use of methadone are heartland issues. It is possible that this court would dismiss plaintiff's lawsuit if he chose not to release these records to defendants' attorney. The court would allow the parties to be heard before imposing any sanction.

So, it remains plaintiff's choice whether to release his DOC medical records to defendants' attorney. We are at the stage in the schedule where time is running short. Therefore, plaintiff shall have until 5:00 p.m. on February 6, 2007 within which to get a copy of a properly executed release form into the office of defendants' attorney. The court will deem a failure to meet this deadline as a choice not to provide the records release.

So, although as a technical matter I am denying defendants' motion to compel, if plaintiff persists in his refusal to sign the requested release, there likely will be material adverse consequences to his lawsuit.³

Entered this 1st day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

³ On a final note, defendants have signaled their intent to file a second, "substantive" summary judgment motion in this case, and plaintiff has signaled his intent to oppose any such motion based on the court's admonition in the preliminary pretrial conference order. Without meaning to seek out trouble before it arrives, I note that the court usually grants leave to file a second summary judgment motion if a party's first motion came file early in the case and was based on procedural grounds such as failure to exhaust administrative remedies.