

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

RUSSEL L. SINGLETARY,

Plaintiff,

v.

ORDER

06-C-323-C

JAMES W. REED, M.D.
CHIEF MEDICAL DIRECTOR
FCI OXFORD
OXFORD, WISCONSIN,

Defendant.

Plaintiff Russel Singletary is proceeding in this Bivens action on a claim that his Eighth Amendment rights were violated when defendant Reed deliberately failed to provide him with certain medications after plaintiff had a colon polyp surgically removed. Defendant filed an answer on September 15, 2006 and a preliminary pretrial conference has been held. Now plaintiff has filed two documents. The first is titled "Motion for Discovery" and the other is titled "Application for Subpoena Duces Tecum."

In his motion for discovery, plaintiff asks this court to order defendant to furnish within 20 days of a hearing on the matter medical records pertaining to him that are in the

custody of the FCI-Oxford health care clinic, as well as records generated at Mercy Medical Center in Oshkosh, Wisconsin and the “Columbia Hospital in Columbia, Wisconsin.”¹ In his application for a subpoena duces tecum, plaintiff asks that the clerk issue subpoena forms so that he can obtain all records pertaining to him relative to his treatment on June 15, 2004 and August 9, 2005 from the Mercy Hospital Records Department and the Columbia Hospital Records Departments, respectively.

To the extent that plaintiff seeks a motion to compel defendant to produce documents in the possession of the Federal Correctional Institution’s health care clinic, the motion is premature. Before the court’s involvement in a discovery dispute is warranted, there must be a dispute. Plaintiff does not indicate that he has requested the production of documents from defendant in the manner prescribed in Fed. R. Civ. P. 34, a copy of which is attached to this order, and that defendant has refused to produce the documents at the time and place plaintiff specified. Fed. R. Civ. P. 34(a). Plaintiff should note that Rule 34 does not require the defendant to provide him with free copies of the documents he wants. If plaintiff wishes to have copies of materials in defendant’s possession for his own records, he will be responsible for paying the costs of duplicating the material.

¹Precisely what hospital plaintiff is referring to is unclear. There is a Columbia Hospital in Milwaukee, Wisconsin. And, although there is a Columbia County in Wisconsin, there is no city by that name.

As for plaintiff's request for subpoena forms, I will direct the clerk of court to refrain from sending plaintiff such forms at this time, because plaintiff has suggested no reason why he cannot obtain the documents he wants without subpoenaing them. Plaintiff has a right to obtain a copy of his own medical records any time he wants them without a subpoena. Perhaps plaintiff believes that if he subpoenas his medical records from the hospitals that treated him he will not have to pay for them. That is not the case. With or without a subpoena, plaintiff is not entitled to free copies of documents that are maintained by his doctor or medical facilities or that are in the possession of the defendant.

ORDER

IT IS ORDERED that plaintiff's motion for discovery is DENIED as premature and plaintiff's application for subpoena duces tecum is DENIED because plaintiff has not shown that he cannot obtain his own medical records without a subpoena.

Entered this 8th day of December, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge