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

PEARLIE BERNARD JACKSON,

Plaintiff,

v.

SHERIFF ERIC RUNAAS, *et al.*,

Defendants.

ORDER

07-cv-733-slc

This is a pro se civil rights lawsuit in which the plaintiff, who is African American, alleges that after a fight with a white inmate named Janssen at the Rock County Jail, defendants punished plaintiff more severely than Jensen because of plaintiff's race. Before the court is plaintiff's motion to compel production of Janssen's medical records and to compel the deposition of the nurse who treated Janssen following the fight. *See* dkt. 30. For the reasons stated below, I am denying this motion without prejudice.

Defendants oppose both phases of plaintiff's motion, contending that Janssen's records are confidential pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Jensen's injuries are irrelevant to plaintiff's claims, and the nurse/witness is not in defendants' employ and therefore must be subpoenaed by other means. *See* dkt. 28.

Defendants' claim of confidentiality is correct as a starting premise, but HIPAA allows a health care provider to disclose medical records in response to a narrowly-tailored court order. *See* 45 C.F.R. § 164.512(e)(1)(I). Although not required by the statute, common sense and fairness suggest that the court give Janssen a chance to object before it acts, and that if the court were to order disclosure, it keep the records under seal. But before we get there, the court has to determine if Janssen's injuries are sufficiently relevant to be discoverable.

On this record, I cannot definitively determine relevance. I can *hypothesize* it: for instance, if plaintiff's injuries from the fight were serious, Janssen's injuries were slight, the defendants actually were aware of these facts, then chose to punish plaintiff but not Janssen, the evidence of Janssen's injuries would be relevant enough to be discoverable.[1] If, however, the defendants were not aware of Janssen's injuries, or even if they were offered the opportunity to learn the extent of Janssen's injuries but declined, then I can conceive of no basis to allow disclosure. If defendants declined to learn the extent of Janssen's injuries, this declination is the evidence relevant to plaintiff's claim of racial animus. If the defendants saw Janssen personally and could assess his injuries by viewing them, then plaintiff may explore this in interrogatories directed to the defendants. But only if the defendants looked at Janssen's medical records or obtained information directly from the treating nurse would the records themselves or treatment information from the nurse be discoverable by plaintiff.

Because plaintiff has not made this showing, I am denying both parts of his motion without prejudice. If plaintiff can establish to the court's satisfaction that any of the defendants actually reviewed Janssen's medical records or discussed Janssen's injuries with his treating nurse, then plaintiff may move for reconsideration.

Entered: July 9, 2008

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

[1] There still could be race-neutral explanations for how and why the jail meted out punishment, but this would not mean plaintiff should be denied access to this information at the outset.