

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

JEREMY M. WINE,

Plaintiff,

ORDER

v.

WILLIAM POLLARD, *et al.*

08-cv-173-bbc

Defendants.

This is a prisoner civil rights lawsuit in which plaintiff is proceeding on his claim that some of the defendants beat him up, two of them then retaliated against him for reporting them by intentionally and unnecessarily shocking him with a taser, and other defendants intentionally had set the stage for this retaliation to occur. Before the court is plaintiff's motion to protect from discovery by defendants all portions of his medical file unrelated to the two medical conditions he wishes to litigate in this lawsuit. *See* dkt. 34.

More specifically, plaintiff objects to the request that he sign a blanket waiver authorizing the AAG to review all of his medical and psychiatric records. Plaintiff contends that defendants must serve a specific discovery request targeting relevant medical records rather than attempt to obtain through the back door a lot of private, sensitive information that has nothing to do with this lawsuit. The waiver form, suggests plaintiff, is a nullity because it is not a discovery request and because it is much too broad.¹

Additionally, plaintiff observes that discovery in this case has been stayed (with the exception of discovery aimed at identifying Doe defendants) pending a decision on defendants' motion for partial summary judgment on the ground of failure to exhaust administrative remedies. *See* July 11, 2008 preliminary pretrial conference order, dkt. 22, at 6.

¹ That said, plaintiff asserts that he is willing to allow a review of his entire file if he is present while the review occurs to screen documents for possible objections. *See* dkt. 34 at 3.

Defendants respond that they should be permitted access to plaintiff's medical records

so that they can determine whether there is a reason to believe that the plaintiff has medical problems that would explain why he would lie about the February 19, 2008 alleged taser incident just as he has been found to have lied about the alleged February 2008 cell extraction incident (See attached Decision Dismissing John Doe Petition and related documents.)

Dkt. 32 at 1.

This prompted an unbidden reply from plaintiff in which he alleges that the state court's finding that plaintiff had lied was inaccurate because it was based on incomplete information. Plaintiff also complains that this whole gambit by the state is irrelevant character assassination. *See* dkt. 35.

I am granting plaintiff's motion on the ground that discovery is stayed for both sides, not just for plaintiff. Once the court has decided whether to narrow this case the parties may resume discovery. Until then, defendants may not review any part of plaintiff's medical file.

Assuming that defendants renew their request at that time, I am not inclined to give them unfettered access to plaintiff's medical file. Their proffered basis for exploring the medical file is specious. Nothing in the state court order suggests that plaintiff suffers from a medical condition that causes him to be untruthful. To the contrary, the court deemed plaintiff to be an intentional liar:

Jeremy Wine gave false testimony before this Court. This John Doe petition must be considered frivolous under any standard.

I find that Jeremy Wine filed this petition solely to harass or intimidate the Department of Corrections employees. His statements are simply lies.

April 20, 2008 Order, Circuit Court for Brown County (Attachment to dkt. 32)

The issuing judge was so incensed that he directed the DOC to share his order with other courts so that they could be made aware of plaintiff's abuse of Wisconsin's "John Doe" statute. *See id.* Duly noted, although I cannot envision how this could be relevant or admissible in the instant case.

Once discovery re-opens, to the extent that the defendants can articulate a specific, legitimate need to review portions of plaintiff's medical file, then plaintiff would be well-advised to allow such a review. That, however, is an issue for another day.

ORDER

It is ORDERED that plaintiff's motion for protection is GRANTED for the duration of the discovery stay in this case.

Entered this 4th day of August, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge