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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

James E. Skinner,  
Plaintiff,

vs.

Charles Ryan, et al.,  
Defendants.

) No. CV-09-2152-PHX-SMM (LOA)

) **ORDER**

This matter is before the Court on Defendants’ Motion to Compel Plaintiff to Sign Medical Authorization. (Doc. 66) Plaintiff opposes the motion as untimely. (Doc. 68) In their Reply, Defendants argue that the request that Plaintiff sign the medical authorization for the “purpose of accessing his medical records from the Arizona Department of Corrections (‘ADC’)” is not a discovery request. (Doc. 69 at 1) Rather, Defendants “are simply seeking a signed medical authorization to obtain Plaintiff’s medical records because Plaintiff has put his health at issue in this case.” (*Id.* at 1-2) For the reasons set forth below, the Court will deny Defendants’ Motion to Compel.

Defendants’ efforts to characterize their request for access to Plaintiff’s medical records as something other than a discovery request is, at best, disingenuous and, at worst, an intentional misrepresentation to the court. As Defendants state in their motion, Plaintiff’s Complaint alleges that he was housed in a filthy cell and that Defendants continually denied his requests for cleaning supplies. Plaintiff further argues that the plexiglass shield covering the front of his cell prevented air from circulating and adversely impacted the temperature in his

1 cell. Plaintiff also alleges he was subjected to extreme temperatures for eight months without  
2 being provided adequate clothing. As a result of these conditions, Plaintiff alleges he suffered  
3 blinding headaches and nausea. (Doc. 1) Defendants contend that, when preparing Defendants'  
4 dispositive motion, counsel for Defendants "determined it was necessary to review Plaintiff's  
5 medical records." (Doc. 66 at 2)

6 Accordingly, defense counsel sent Plaintiff a letter on October 6, 2010, requesting  
7 that Plaintiff provide a medical authorization to release his ADC medical records. Counsel  
8 indicates that Plaintiff, through his counselor CO III Brown, advised counsel he would not sign  
9 the authorization. Defendants filed the pending motion to compel, arguing that because Plaintiff  
10 has placed his medical condition at issue, he cannot "refuse discovery on that issue." (*Id.*) In  
11 their own motion to compel, Defendants refer to Plaintiff's medical records, which Defendants  
12 seek to access by way of a medical authorization executed by Plaintiff, as "discovery." (*Id.* at  
13 2) ("Plaintiff has placed his health at issue and cannot, therefore, refuse *discovery* on that  
14 issue.") (emphasis added). Defendants' request for Plaintiff's medical records via a medical  
15 authorization is properly characterized as discovery.

16 In an effort to avoid the discovery deadlines, Defendants' Reply asserts that they are  
17 not seeking discovery, but are merely seeking an order directing Plaintiff to sign a medical  
18 authorization. (Doc. 69) As Defendants noted in their Motion to Compel, the medical records  
19 are discovery. The fact that Plaintiff must sign a medical authorization to permit the Arizona  
20 Department of Corrections to release those records does not change the underlying character  
21 of the medical records themselves. Besides, Defendants have not provided the Court with any  
22 authority, much less controlling or persuasive authority, that a plaintiff, alleging personal injury  
23 and damages in a civil case, is required under the Federal Rules of Civil Procedure to sign a  
24 medical authorization for the release of his medical records. For example, such records may be  
25 obtained by a timely request for subpoena *duces tecum* and court order prior to the expiration  
26 of discovery. *Kent v. Cummings*, 2010 WL 2643538 (D.Ariz. 2010); *Clark v. Vega Wholesale,*  
27 *Inc.*, 181 F.R.D. 470, 472 (D.Nev. 1998) (concluding that a plaintiff cannot be compelled to  
28 sign a medical release pursuant to Rule 34, Fed.R.Civ.P., to obtain copies of her medical records

1 in the possession of her physician). Of course, a plaintiff may voluntarily sign a medical  
2 authorization if he so agrees. A plaintiff, however, must produce copies of relevant medical  
3 records in his possession pursuant to Rules 26(a)(1)(A)<sup>1</sup> and if requested by 34, Fed.R.Civ.P.

4 As Plaintiff noted in his response, Defendants' October 6, 2010 letter to Plaintiff  
5 requesting that he sign the medical authorization was served several months after the June 21,  
6 2010 discovery deadline. (Doc. 26) Likewise, the Motion to Compel was filed over a month  
7 after the already-extended September 3, 2010 deadline for bringing discovery disputes to the  
8 Court's attention. (Doc. 48) Defendant's discovery request and motion to compel are untimely.  
9 Defendants have not even attempted to explain why their discovery request and motion to  
10 compel are untimely or why an extension of the applicable deadlines is warranted. *See*  
11 Fed.R.Civ.P. 6(b) (stating that the court may, for good cause shown, extend a deadline "on  
12 motion made after the time has expired if the party failed to act because of excusable neglect.").  
13 Moreover, the Ninth Circuit has made clear that the Rule 16 deadlines are "to be taken  
14 seriously." *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994)

15 Additionally, Defendants have not certified "that after personal consultation and  
16 sincere efforts to do so," they were unable to resolve this discovery issue with Plaintiff absent  
17 court intervention as mandated by Rule 37(d)(1)(B), Fed.R.Civ.P., and LRCiv 7.2(j). The  
18 discovery deadline expired on June 21, 2010, doc. 26, and the discovery motion deadline was  
19 extended to September 3, 2010. (Doc. 48) Because Defendants' October 14, 2010 Motion is  
20 untimely and Defendants have not conferred with Plaintiff to resolve this matter as required by  
21 Rule 37(d)(1)(B), Fed.R.Civ.P., and LRCiv 7.2(j), the Court will deny Defendants' Motion to  
22 Compel. The Court, however, urges that parties to mutually resolve this issue on their own as

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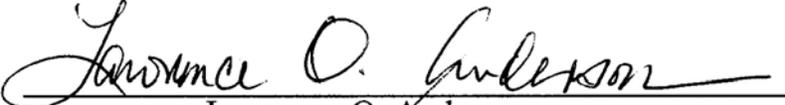
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25 <sup>1</sup> Federal Rule of Civil Procedure 26(a)(1)(A) requires that, unless exempted by Rule  
26 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a plaintiff must disclose witnesses who  
27 may possess discoverable information and the substance of that information, documents, and tangible  
28 items which may be used to support the claims made, and a computation of damages. Rule  
26(a)(1)(B)(iv), however, exempts a prisoner plaintiff from initial disclosures in "an action brought  
without an attorney by a person in the custody of the United States, a state, or a state subdivision . . .  
." Rule 26(a)(1)(B) (iv), Fed.R.Civ.P.

1 it may serve both sides' interests in the long run for Plaintiff to voluntarily disclose his relevant  
2 medical records prior to trial. Because Plaintiff has put his health at issue, Plaintiff and  
3 Defendants will need access to Plaintiff's medical records to pursue or defend this action.

4 In view of the foregoing,

5 **IT IS ORDERED** that Defendants' Motion to Compel, doc. 66, is **DENIED**.

6 Dated this 5<sup>th</sup> day of November, 2010.

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8 Lawrence O. Anderson  
9 United States Magistrate Judge

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