

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**CR F BRANNON  
ADC #124405A**

**PLAINTIFF**

**v.**

**No. 5:13-cv-16-DPM-HDY**

**JOHN O. LYTLE, Doctor, Corizon,  
ADC; BERNARD G. CROWELL, Doctor,  
Corizon/ADC; TROY MOORE, Doctor,  
Corizon/ADC; ESTELLA BLAND, APN,  
Cummins Unit, ADC; and CORIZON INC.**

**DEFENDANTS**

**ORDER**

Opposed recommendation, *No 81*, adopted as modified on *de novo* review. FED. R. CIV. P. 72(b)(3).

1. Brannon's claims against Dr. Lytle are dismissed without prejudice.

The U.S. Marshal attempted to serve him twice by mail, but both times the summons was returned unexecuted. *No 9 & No 39*. It is unclear whether the second address was correct or not; the suit papers were returned unclaimed. It is Brannon's responsibility to provide a correct address. *Lee v. Armontrout*, 991 F.2d 487, 489 (8th Cir. 1993)(*per curiam*). In any event, Brannon can still sue Dr. Lytle in another case.

2. Brannon says that, had he been given access to his medical records

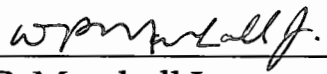
or had proper legal counsel, he would have proven his deliberate indifference claims. *No 82 at 2*. First, Brannon had access to all the documents Defendants possess about his medical care, including medical records. *No 83 at 2*. Second, he received care from two different doctors and had three surgical procedures. *No 72-1 & No 72-2*. Two other doctors reviewed Brannon's medical records and provided affidavits saying that the treatment Brannon received was appropriate. *No 72-2 & No 72-3*. One doctor mailed Brannon information in an attempt to help him better understand his condition. *No 72-2 at 4*. The Court does not see the kind of factual or legal complexity that would justify counsel. *Ward v. Smith, 721 F.3d 940 (8th Cir. 2013)(per curiam)*.

3. Brannon also objects to his being denied the right to have witnesses present at his pre-jury hearing. Judge Young alerted him that witnesses would only be permitted if Brannon were unable to testify himself. *No 42*. "For purposes of the evidentiary hearing, all of [Brannon's] testimony had to be (and was) regarded as true, see *Johnson v. Bi-State Justice Ctr., 12 F.3d 133, 135-36 (8th Cir. 1993)*, making other witnesses' testimony cumulative." *Munson v. Norris, 435 F.3d 877, 880 (8th Cir. 2006)*. This resolves the issue as to proposed witnesses Hughes, Glover, and Esaw. *No 47*. And because all

medical records were provided, there was no need for Krumpton or a records clerk from St. Vincent's hospital. *Ibid.* It is unclear whether the x-rays were ever provided; but Judge Young assumed, as has this Court, that Brannon's knee replacement was unsuccessful, so there was no evidentiary work for the x-rays to do.

4. The motions for summary judgment, No 56 & 70, are granted. And the Court certifies that an *in forma pauperis* appeal from the Order and the accompanying Judgment would not be taken in good faith.

So Ordered.

  
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D.P. Marshall Jr.  
United States District Judge

  
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27 March 2014