

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY R. TURNER,

Plaintiff,

No. 2:10-cv-1848 MCE KJN P

vs.

WARDEN SALINAS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding through counsel. Plaintiff is presently incarcerated at Salinas Valley State Prison. On October 19, 2012, plaintiff was directed to file a report on plaintiff’s health status. Plaintiff filed a status report, and defendants filed a response. Plaintiff was unable to review plaintiff’s confidential medical or mental health records due to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and seeks a court order allowing such access. Although plaintiff’s counsel was able to glean some information from plaintiff’s central file, review of the medical records would enable counsel to obtain more information as to plaintiff’s health status to assist the court in further scheduling. Defendants do not oppose allowing plaintiff’s counsel’s access to these records.

HIPAA prohibits the wrongful disclosure of individually identifiable health information, defined as information that relates to the physical or mental health or condition of

1 an individual, or the provision of health care to an individual, that identifies the individual. 42
2 U.S.C. § 1320d-6; 45 C.F.R. § 160.103. Under HIPAA, disclosure is permitted, *inter alia*,
3 pursuant to a court order, subpoena, or discovery request when the healthcare provider “receives
4 satisfactory assurance from the party seeking the information that reasonable efforts have been
5 made by such party to secure a qualified protective order. . . .” 45 C.F.R. § 164.512(e)(1)(ii)(B).
6 The protective order must prohibit “using or disclosing the protected health information for any
7 purpose other than the litigation . . .” and “[r]equire [] the return to the covered entity or
8 destruction of the protected health information . . . at the end of the litigation or proceeding.” 45
9 C.F.R. § 164.512(e)(1)(v); see also Crenshaw v. MONY Life Ins. Co., 318 F.Supp.2d 1015, 1029
10 (S.D. Cal. 2004).

11 Here, the court orders that plaintiff’s counsel shall be granted access to review,
12 and to photocopy, plaintiff’s medical and mental health records from the time period of January
13 1, 2012, through November 30, 2012, in the possession of the California Department of
14 Corrections and Rehabilitation. Because these records are being reviewed solely for the purpose
15 of determining plaintiff’s current health status and its impact on the further scheduling of this
16 case, the court does not grant access to defendants. In keeping with HIPAA, plaintiff’s counsel is
17 prohibited from using or disclosing plaintiff’s medical and mental health records for any purpose
18 other than the litigation of this matter. Disclosure is limited to plaintiff’s attorneys and their staff
19 working in conjunction with this matter, including any photocopy service that plaintiff’s counsel
20 may employ to obtain these records. At the conclusion of this litigation, plaintiff’s counsel shall
21 return or destroy such records, including all copies.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. Plaintiff’s counsel and their staff, including a photocopy service, is granted
24 access to review and photocopy the confidential medical and mental health records for plaintiff
25 Anthony Turner, Inmate Identification #G-27511, from January 1, 2012, through November 30,
26 2012, that are in the possession of the California Department of Corrections and Rehabilitation,

1 subject to the above protective order;

2 2. Within forty-five days from the date of this order, plaintiff's counsel shall file a
3 written status update as to plaintiff's condition; and

4 3. The Clerk of the Court is directed to send a copy of this order to Monica
5 Anderson, Supervising Deputy Attorney General.

6 DATED: December 3, 2012

7

8


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

9

10 turn1848.hippa

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26