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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONE YOUNGS,

Plaintiff,

v.

A. DOWLATSHAHI,

Defendant.

No. 2:15-cv-2563 MCE KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On January 4, 2016, the undersigned dismissed the original complaint with leave to amend. Pending before the court is plaintiff's amended complaint. (ECF No. 12.)

The only named defendant is A. Dowlatshahi, a dentist at the California Health Care Facility ("CHCF"). Plaintiff alleges that defendant Dowlatshahi violated his rights when he left plaintiff's dental/medical records "unsecured," which resulted in another inmate picking them up and giving them to plaintiff. Plaintiff alleges that defendant left the dental/medical records in a place where inmates had access to them. The records stated that plaintiff was HIV positive. Apparently the inmate who retrieved the records and gave them to plaintiff read them, and disclosed plaintiff's HIV status to other inmates. Plaintiff alleges that as a result of the disclosure

1 of his HIV status, plaintiff has been taunted and assaulted by other inmates.

2 In the order dismissing plaintiff’s original complaint, the undersigned found that plaintiff
3 had not pled sufficient facts to state a potentially colorable claim for violation of his right to
4 privacy.¹

5 “Under Ninth Circuit authority, plaintiff has a constitutional right to
6 information privacy applicable to medical information...” Doe v.
7 Beard, 2014 WL 3507196 at *4-5 (C.D. Cal. 2014). However,
8 plaintiff’s allegations are insufficient to state a potentially colorable
9 privacy claim because plaintiff alleges that defendant Dowlatshahi
acted negligently. The District Court’s discussion in Doe v. Beard
on this issue is instructive:

10 As to the initial disclosure, Plaintiff’s allegations are
11 insufficient to state a claim because Plaintiff has alleged
12 only negligent conduct by Defendants. It is well established
13 that negligent conduct is ordinarily not enough to state a
14 claim alleging a denial of liberty or property under the
15 Fourteenth Amendment. See Daniels v. Williams, 474 U.S.
327, 330 (1986); Davidson v. Cannon, 474 U.S. 344, 347
(1986) (“[T]he Due Process Clause of the Fourteenth
Amendment is not implicated by the lack of due care of an
official causing unintended injury to life, liberty or property.
In other words, where a government official is merely
negligent in causing the injury, no procedure for
compensation is constitutionally required.”).

16 The highly sensitive nature of personal medical information
17 requires that the government take correspondingly robust
18 precautions to safeguard individual privacy. Indeed, the
19 status of one’s personal medical well-being is among the
20 most sensitive information a person may possess. The
21 evolving appreciation of the importance of preventing the
22 involuntary disclosure of such information is reflected,
23 among other developments, by the 1996 enactment of the
24 Health Insurance Portability and Accountability Act
(HIPAA), Pub.L. 104–191, 110 Stat.1936, which
“recogniz[ed] the importance of protecting the privacy of
health information in the midst of the rapid evolution of
health information systems.” Webb v. Smart Document
Solutions, LLC, 499 F.3d 1078, 1083 (9th Cir. 2007)
(quotation marks and citation omitted). Disclosures
resulting from a failure by Defendants to take appropriately
robust safeguards may constitute conduct that is more than

25 ¹ In the order dismissing the original complaint, the undersigned stated that to the extent plaintiff
26 sought to state a claim against defendants under the Health Insurance Portability and
27 Accountability Act (HIPPA”), it is a settled question in the Ninth Circuit that HIPPA does not
28 provide for a private right to action for enforcement. Webb v. Smart Document Solutions, 499
F.3d 1078, 1080 (9th Cir. 2007). It does not appear that the amended complaint raises a HIPPA
claim.

1 negligent and thus subject to liability under Section 1983.

2 Here, however, Plaintiff has not alleged any facts to show
3 that the government failed to take appropriate precautions
4 and that the disclosure was a result of such a failure. The
5 FAC expressly alleges that the disclosure of Plaintiff's
6 medical records by Defendant Young on January 21, 2012,
7 was "negligent []." (FAC ¶ 64.) Plaintiff's factual
8 allegations do not contradict this characterization, stating
9 only that "Young had in fact given Plaintiff's medical
10 records to another inmate ..." (Id. ¶ 32.) Therefore, Plaintiff
11 has not alleged that the government violated its duty of care.

12 Doe, at *6.

13 (ECF No. 8 at 4.)

14 The undersigned found that in the original complaint, plaintiff alleged that defendant
15 Dowlatshahi acted negligently in allowing another inmate to plaintiff's medical/dental records.
16 (Id. at 5.) On that ground, the undersigned dismissed the complaint with leave to amend.

17 Attached to the amended complaint is a copy of a memorandum addressed to plaintiff
18 from California Correctional Health Care Services. (ECF No. 12 at 9.) While this letter
19 characterizes defendant Dowlatshahi's actions as "inadvertent," it also states that, "we...want to
20 assure that CCHCS has taken steps to mitigate these types of events, including information
21 security training for staff." (Id.)

22 The decision by CCHCS to provide information security training in response to the
23 disclosure of plaintiff's records suggests that appropriate precautions may not have been taken to
24 protect plaintiff's privacy prior to their disclosure. However, in order to proceed on a claim
25 alleging that that the disclosure of plaintiff's records was caused by CCHCS's failure to take
26 proper precautions, such as their failure to train staff, plaintiff must name an appropriate
27 defendant, such as the CCHCS Warden. In other words, plaintiff only states a potentially
28 colorable claim for violation of his right to privacy against defendant Dowlatshahi if he states a
potentially colorable claim against the prison official(s) whose failure to take proper precautions
led to defendant Dowlatshahi's disclosure of plaintiff's records.

On this ground, the amended complaint is dismissed with leave to file a second amended
complaint. To cure the pleading defects discussed above, the second amended complaint shall

1 include all claims raised in the first amended complaint, but also a claim against an appropriate
2 CCHCS official or officials for failing to take appropriate precautions to protect plaintiff's
3 privacy.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's amended complaint is dismissed with thirty days to file a second amended
6 complaint;


7 2. Within thirty days from the date of this order, plaintiff shall complete the attached
8 Notice of Amendment and submit the following documents to the court:

9 a. The completed Notice of Amendment; and

10 b. An original and one copy of the Second Amended Complaint.

11 3. The Clerk of the Court is directed to send plaintiff the form for a civil rights complaint
12 by a prisoner.

13 Dated: January 29, 2016

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16 KENDALL J. NEWMAN
17 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____ Second Amended Complaint

Plaintiff