

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02593-CMA-MEH

PETER P. MAUHLIN,

Plaintiff,

v.

BIER, Correctional Supervisor,
A. OSAGE, Physicians Assistant,
DALGLEISH, EMT,
BARRY, Correctional Supervisor,
HAM, Correctional Officer,
JOHN DOE 1, Correctional Officer,
JOHN DOE 2, Medical Officer,

Defendants.

ORDER

Michael E. Hegarty, United States Magistrate Judge.

Pending before the Court is Plaintiff's "Motion for an Order under Rule 35" [filed May 13, 2009; docket #143]. Plaintiff requests the Court to order independent medical examinations of the five identified defendants "at this time and at their expense, to determine the cause or source of the defendants collective amnesia [sic]" (Docket #143 at 1.) Plaintiff brings this motion after receiving Defendants' responses to Plaintiff's interrogatories, which state Defendants "ha[ve] no present recollection of the specific subject matter." (*Id.* at 5.)

Fed. R. Civ. P. 35 provides that a court "may order a party . . . to submit to a physical or mental examination." Such order "may be made only on motion for good cause and on notice to all parties and the person to be examined; and . . . must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it." Plaintiff cannot meet the "in controversy" and "good cause" requirements of Rule 35 "by mere conclusory

allegations of the pleadings - nor by mere relevance to the case - but [] an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination.” *Schlagenhauf v. Holder*, 379 U.S. 104, 118 (1964).

As Defendants do not attempt to assert their mental or physical condition in support of or defense of a claim, Plaintiff must demonstrate an affirmative showing of “in controversy” and “good cause.” *Schlagenhauf*, 379 U.S. at 119-20. Plaintiff offers nothing other than conclusory statements speculating that Defendants somehow suffer from “collective amnesia,” because Plaintiff is unsatisfied with their discovery responses. (Docket #143 at 2.) A contention so arguably frivolous hardly amounts to a substantive basis for ordering parties to endure an independent medical examination. Accordingly, the Court **DENIES** Plaintiff’s “Motion for an Order under Rule 35.”

Dated at Denver, Colorado, this 5th day of August, 2009.

BY THE COURT:

s/ Michael E. Hegarty
Michael E. Hegarty
United States Magistrate Judge