

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01827-WYD-MEH

ROBERT HILLS,

Plaintiff,

v.

UNITED STATES,

MR. SMITH, Asst. Health Admin., in his official and individual capacity,

DR. DAVID ALLRED, in his official and individual capacity,

NONA GLADBACH, PA, in her official and individual capacity, and

DR. DANIEL SVERN, in his official and individual capacity,

Defendants.

MINUTE ORDER

Entered by Michael E. Hegarty, United States Magistrate Judge, on November 25, 2009.

Plaintiff's Motion for Physical and Mental Examination [filed November 24, 2009; docket #78] is **denied**. Fed. R. Civ. P. 35 provides that a court "may order a party . . . to submit to a physical or mental examination." Here, Plaintiff is volunteering to submit to an examination; thus, no order is necessary.

Furthermore, the use of Rule 35 to obtain medical care and treatment or to complain of deliberate indifference to medical needs is improper. *See Green v. Branson*, 108 F.3d 1296, 1304 (10th Cir. 1997). Plaintiff's motion indicates his primary purpose is to obtain health care, therefore his motion is properly denied.

Plaintiff's "General Motion" [filed November 24, 2009; docket #79] is **granted** to the extent it requests the Court to consider Plaintiff's filings in support of his motions for a temporary restraining order. Plaintiff's "General Motion" is further **granted** to the extent it seeks to dismiss Dr. Svern as a named defendant. The Court construes this request to be pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and directs the Clerk of Court to terminate Dr. Svern as a named defendant.