

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02432-BNB

TERRANCE M. FARRELL III,

Plaintiff,

v.

GARY WILSON,
DENVER HEALTH AND HOSPITAL AUTHORITY,
MEDICAL ADMINISTRATOR OF THE DDC,
A. GONZALEZ, and
GREG KELLERMEYER,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Terrance M. Farrell III, filed an Amended Complaint as required by a September 8, 2014 Order. The Court must construe the Amended Complaint liberally because Plaintiff is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). If the Amended Complaint reasonably can be read “to state a valid claim on which the plaintiff could prevail, [the Court] should do so despite the plaintiff’s failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements.” *Hall*, 935 F.2d at 1110. However, the Court should not act as an advocate for a *pro se* litigant. *See id.*

Plaintiff has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action. Pursuant to § 1915(e)(2)(B)(i), the Court must dismiss the action if the claims Plaintiff is asserting are frivolous or malicious. For the reasons

stated below, the Court will dismiss the action as frivolous and malicious.

“Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious.” *McWilliams v. Colorado*, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted). The Court may consult its own records to determine whether a pleading repeats pending or previously litigated claims. See *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972). After review of its records, the Court finds that Plaintiff’s Amended Complaint is repetitive of the claims Plaintiff is pursuing in another action--*Farrell v. Kellermeyer, et al.*, No. 13-cv-01605-MSK-CBS, ECF No. 31 (D. Colo. filed June 19, 2013).

All defendants named in the Amended Complaint in this action were named as defendants in Case No. 13-cv-01605 and, like the instant action, Plaintiff contends in Case No. 13-cv-01605 that defendants were deliberately indifferent to his medical needs when they decided to abruptly discontinue his anticonvulsant medication and, as a result, he incurred injuries including continued psychological harm. He also asserts in both this action and Case No. 13-cv-01605 that he was retaliated against for reporting deputies who accessed Facebook and YouTube on government computers.

Plaintiff requested leave to file an amended complaint in Case No. 13-cv-01605 on April 25, 2014. Magistrate Judge Shaffer denied the request to amend on June 5, 2014, with leave to refile after the court rules on the pending motion to dismiss. Plaintiff filed an objection to Magistrate Judge Schaffer’s denial and tendered a fourth amended complaint on July 16, 2014. The fourth amended complaint in Case No. 13-cv-01605 in part has the identical language that Plaintiff has used in this action.

In filing this action, Plaintiff attempts to circumvent the court order in Case No.

13-cv-01605 denying his request to amend and directing him to refile once the court rules on the motion to dismiss. Because Plaintiff's claims are repetitive and appear to be abusive litigation conduct, the instant action will be dismissed as legally frivolous and malicious.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Amended Complaint and the action are dismissed as legally frivolous and malicious pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 9th day of October, 2014.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court