

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ERIC LAMONT TEAL,

Plaintiff,

v.

CASE NO. 4:12cv456-RH/CAS

DUANE SPEARS et al.,

Defendants.

**ORDER DISMISSING THE CLAIMS AGAINST DR. ONG AND
GRANTING LEAVE TO FILE A SECOND AMENDED COMPLAINT**

The defendant Dr. Francis Ong has moved to dismiss the first amended complaint for failure to state a claim against Dr. Ong on which relief can be granted against. The motion is before the court on the magistrate judge's report and recommendation, ECF No. 38. No objections have been filed.

The report and recommendation correctly concludes that the motion to dismiss should be granted. The first amended complaint's factual allegations are insufficient to support the claim that Dr. Ong was deliberately indifferent to the plaintiff's serious medical needs.

In response to Dr. Ong's motion to dismiss, the plaintiff has alleged additional facts, including that Dr. Ong knew—and said—that the plaintiff needed additional surgery. If indeed Dr. Ong knew that the plaintiff needed additional surgery but failed to recommend the surgery or refer the plaintiff for further evaluation or treatment, Dr. Ong may have been deliberately indifferent to a serious medical need. This order grants leave to file a second amended complaint.

If the plaintiff chooses to file a second amended complaint, he must completely fill out a new civil rights complaint form, marking it "Second Amended Complaint." The second amended complaint must contain all of the plaintiff's allegations and should not in any way refer to the original or first amended complaints. An amended complaint completely replaces all previous complaints, and they are disregarded. N.D. Fla. Loc. R. 15.1. The second amended complaint filed with the court must contain the plaintiff's original signature, but the plaintiff must also keep an identical copy for himself.

For these reasons,

IT IS ORDERED:

1. The report and recommendation, ECF No. 38, is **ACCEPTED** and adopted as the court's opinion.
2. Dr. Ong's motion to dismiss, ECF No. 13, is **GRANTED**. The first amended complaint is dismissed.

3. The plaintiff may file a second amended complaint by February 12, 2014, or any different deadline set by the magistrate judge.

4. The case is remanded to the magistrate judge, who may amend this order's requirements on the filing of a second amended complaint to take account of the pendency of the first amended complaint against other defendants.

SO ORDERED on January 13, 2014.

s/Robert L. Hinkle
United States District Judge