

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIJAH M. FORD,

Plaintiff,

v.

MICHAEL C. KENNERLY, et al.,

Defendants.

Case No. 1:16-cv-243

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff filed this prisoner civil rights action, alleging, in pertinent part, deliberate indifference to his medical needs under 42 U.S.C. § 1983 against Defendants Wilson, Day, Kennerly, Czop, Gerlach, Behler, LaBarre, Jastifer, Bounting, Kemp, Siglar, Ibarra, Squier, Orlebeke, Kangas and Corizon Healthcare. Defendants Corizon Health Care, Czop, Gerlach, Kennerly, Orlebeke and Squier filed a motion to dismiss Plaintiff's deliberate indifference claims on the ground that Plaintiff has refused to comply with an October 4, 2016 Order of the Court compelling Plaintiff to timely execute releases necessary to permit Defendants access to his medical records (Dkt 69). Defendants Bounting, Day, LeBarre, Siglar and Wilson filed a Concurrence and Joinder in the motion (Dkt 70). Plaintiff did not respond to the motion. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, Dkt 81) on January 5, 2017, recommending that this Court grant the motion to dismiss the

deliberate indifference claims pursuant to FED. R. CIV. PRO. 37(b)(2)(A)(v).¹ The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 84, as supplemented by Dkt 86). Defendants filed a response to the objections (Dkt 85). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his objections, Plaintiff asserts that he "fully cooperated" with Defendants' request and that the "Health Information Manager was left with the final duty to send to the Defendants and their attorneys a copy of Plaintiff Ford's medical record" (Pl. Obj., Dkt 84 at PageID.1271-1272). Plaintiff opines that he should not be held accountable for the "inexperienced actions of the Health Information Manager" (*id.* at PageID.1273). Conversely, in his supplement to his objections, Plaintiff attaches an MDOC form from the Bureau of Health Care Services, indicating that "Medical Records mailed on 12/21/16" (Dkt 86 at PageID.1281-1282).

Plaintiff's objections are properly denied.

The Magistrate Judge identified and weighed the relevant factors for considering whether to dismiss a claim under Rule 37 for failure to obey an order or provide discovery. Specifically, as delineated in the Report and Recommendation, the Magistrate Judge determined that Plaintiff's refusal to follow the Court's October 4, 2016 Order is "willful and prejudices Defendants' ability to defend Plaintiff's claims" (R&R, Dkt 81 at PageID.1259). The Magistrate Judge also pointed out that Plaintiff was expressly warned that failure to comply with the Court's Order would result in a recommendation that his deliberate indifference claims be dismissed (*id.*; 10/4/16 Order, Dkt

¹The Magistrate Judge noted that service had yet to be effected on Defendants Behler, Jastifer, Kemp, Ibarra and Kangas (R&R, Dkt 81 at PageID.1257, n.1).

60 at PageID.1148 (“**In the event Plaintiff fails to timely comply with this Order, the undersigned will recommend that Plaintiff’s claims against the aforementioned Defendants be dismissed for failure to comply with the Court’s Orders.**”) [emphasis in original]).

Plaintiff’s argument fails to demonstrate any factual or legal error in the Magistrate Judge’s analysis or recommendation. As Defendants point out (Dkt 85 at PageID.1278), it is incorrect for Plaintiff to assert that he “fully cooperated” with this Court’s October 4, 2016 Order requiring him to “execute the releases necessary to permit access to his medical records no later than October 31, 2016” after conceding that he “changed the dates” and did so during an unspecified time in November. Defendants opine that they have devoted an unnecessary amount of time to attempting to convince Plaintiff to allow discovery (*id.* at PageID.1279). Indeed, in their January 27, 2017 response to Plaintiff’s objections, Defendants assert that Plaintiff has still not provided a signed release that complies with Defendants’ original request (*id.* at PageID.1278-1279).

Consequently, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 84) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 81) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants’ Motion to Dismiss (Dkts 69 & 70) is GRANTED, and Plaintiff’s remaining deliberate indifference claims are DISMISSED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: April 12, 2017

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge