

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES TONEY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:10-CV-2056-JAR
)	
MICHAEL HAKALA, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on the following motions filed by Plaintiff: Motion for an Order Permitting Photograph of Plaintiff [ECF No. 170]; Motion for Extension of Time in Which to Disclose Expert Opinion [ECF No. 171]; and Motion to Compel and Extension of Time [ECF No. 178].

With respect to Plaintiff's Motion for an Order Permitting Photograph, Plaintiff seeks a court order directed specifically to Terry Russell, Warden of the Eastern Diagnostic Correctional Center, allowing him to obtain photographs of himself without a shirt and in gym shorts. Plaintiff contends these photographs will be used as evidence of his injuries and disabilities and demonstrate his serious medical needs. Plaintiff states that current prison rules and regulations permit the taking of photographs of offenders, but only in state gray canvas pants and shirts. (Exhibit 1, Doc. No. 170-1) Defendants filed no response to the motion. Because the taking of such photographs would be inconsistent with prison rules and regulations, and because such photographs would not be probative in any event, this motion will be denied.

In support of his Motion for Extension of Time in Which to Disclose Expert Opinion and Motion to Compel and Extension of Time, Plaintiff states that he has retained a medical expert,

Steven R. Graboff, M.D., and that to prepare his medical opinion, Dr. Graboff must review Plaintiff's medical records, including his X-rays and MRI scans. Plaintiff seeks an order from the Court directing Defendants to produce all X-ray and MRI images to his medical expert, Dr. Graboff, and an additional 30 days from the date those images, as well as Plaintiff's complete medical records, are produced for Dr. Graboff to review them and render his opinion, and for Plaintiff to then disclose Dr. Graboff's opinion. Plaintiff has also renewed his motion for an order allowing him to take photographs of his injuries.

Defendants oppose Plaintiff's motion for extension of time on the grounds that Plaintiff received all of his current medical information well in advance of the September 18, 2012 discovery deadline, and thus had ample time to retain and disclose a medical expert. Because he failed to do so, his request for extension of time should be denied. Defendants further argue that extending the discovery deadline without extending the summary judgment deadline would prejudice them,¹ and that if the Court was to extend the discovery deadline, Defendants should be provided an opportunity to review the report, depose Dr. Graboff, and consider retaining their own medical expert.

Consistent with this Court's August 24, 2012 Order directing Defendants to provide copies of Plaintiff's x-rays and MRI scans to Plaintiff's medical expert, if one was designated, the Court will grant Plaintiff's motions to compel and for extension of time. The Court will also allow Defendants an opportunity to review Dr. Graboff's report and depose him, and to supplement their Motion for Summary Judgment if they wish. Plaintiff's renewed request for an order allowing him to take photographs of himself will be denied.

¹Defendants filed their motion for summary judgment on October 1, 2012. (Doc No. 173)

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for an Order Permitting Photograph of Plaintiff [170] is **DENIED**.

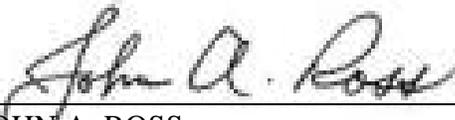
IT IS FURTHER ORDERED that Plaintiff's Motion for Extension of Time in Which to Disclose Expert Opinion [171] and Motion to Compel and Extension of Time [178] are **GRANTED** as follows:

Defendants shall provide Plaintiff's designated medical expert, Dr. Steven R. Graboff, with Plaintiff's medical records, including copies of his x-rays and DVD/CD recordings of his MRI scans images, within seven (7) days of the date of this order.

Plaintiff is granted an additional thirty (30) days from the date Defendants produce Plaintiff's medical records to provide a medical opinion on his care and treatment while confined.

IT IS FURTHER ORDERED that Defendants shall have an opportunity to review Dr. Graboff's report and depose him. Defendants shall be permitted to supplement their pending motion for summary judgment in light of Dr. Graboff's medical opinion.

Dated this 16th day of October, 2012.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE