

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ANDREW A. HERZOG, )  
)  
Plaintiff, )  
)  
v. )  
)  
DOCTOR STEPHEN O’NIEL, )  
)  
Defendant. )

8:10CV313

**MEMORANDUM  
AND ORDER**

This matter is before the court on its own motion. The plaintiff, a patient confined at the Norfolk Regional Center (“NRC”), claims that the defendant physician ordered NRC staff to open and read the plaintiff’s legal mail. (See Filing No. 1.) The defendant submitted a summary judgment motion, affidavit and brief stating that he never issued such an order, if a staff member read the plaintiff’s legal mail the defendant did not authorize it and the defendant is entitled to qualified immunity. (Filing Nos. 89, 91 and 92.) The plaintiff has not submitted any evidence in response to the summary judgment motion. (See Docket Sheet.) Out of an abundance of caution, the undersigned will give the plaintiff another opportunity to respond. If the plaintiff has evidence, rather than supposition, that the defendant ordered NRC staff to read his legal mail, then the plaintiff should submit an affidavit providing that evidence. Accordingly,

IT IS THEREFORE ORDERED that: plaintiff shall have until **March 27, 2012**, to submit an affidavit or other evidence showing that defendant ordered NRC staff to read his legal mail. After **March 27, 2012**, the pending motion for summary judgment will be ripe for resolution.

DATED this 29th day of February, 2012.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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